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«LEGAL BASES OF ENVIRONMENTAL CONTROL AND SUPERVISION IN THE FIELD OF ENVIRONMENTAL PROTECTION»

ANNOTATION

To the dissertation work of N.N. Poshanov to get the degree of Doctor of Philosophy (PhD) on specialty 6D030100 – «Jurisprudence»

General characteristics of the dissertation research. The dissertation is designed to comprehensively study the issues of ecological control and surveillance in the environmental protection field in the Republic of Kazakhstan. The study considers the emergence of the concepts of ecological control and surveillance, the concept and legal content of ecological control and surveillance, the relationship between the concepts of ecological control and surveillance, the description of ecological control and surveillance as a function of public administration, types of ecological control, state environmental control, industrial ecological control and public ecological control and the issues of their implementation, ecological control improvement foreign experience, the activities of government agencies carrying out ecological control and surveillance, organizational and legal issues of improving state ecological control. Furthermore, a comparative analysis of the findings of domestic and foreign scientists on these issues was conducted and the important scientific views and principles achieved by them were considered and studied from a theoretical and practical point of view.

Relevance of the research topic. The issues of environmental protection, rational use of natural resources, protection, reproduction and use of natural resources have always been on the agenda. Currently, there are many violations taking place related to the use of the environment every day. As a result, a certain amount of environmental damage is done. That is, due to the irresponsible attitude of nature users to the environment, a failure to conform to the environmental legislation, environmental pollution, land and soil degradation, nonconformity with water quality standards, non-compliance with rules, requirements of protecting atmospheric air, including technical regulations, standards when putting into operation and using vehicles and other mobile devices and many such negative situations take place. The main task of ecological control and surveillance in the environmental protection field is the prevention and avoidance of the above-mentioned violations and other actions harming the environment. The main point of the above-mentioned issues is the maintenance of constant control of the environment. It is also necessary to further improve the implementation of this activity through scientific research in the field of ecological control and surveillance by the state.

Paragraph 1 of Article 31 of the Constitution of the Republic of Kazakhstan, adopted on August 30, 1995, states that «the state aims to protect the environment that is conducive to human life and health». For this, ecological control and surveillance of the environment is of great importance.

In his Address to the People of Kazakhstan «Strategy "Kazakhstan-2050: a new political course of the established state» dated December 14, 2012, the President of the Republic of Kazakhstan Nursultan Nazarbayev noted the sixth challenge in the world - the exhaustion of natural resources. In his speech, the President said: «In the context of limited and depleted natural resources of the earth, the growth of unprecedented consumption in the history of mankind accelerates the processes in all directions, both negative and positive. Our country has a number of advantages. God has given us many natural resources. Other countries and peoples will need our resources. It is of fundamental importance for us to think of our natural resources. We need to learn how to properly manage them, and most importantly, how to integrate the country's natural resources more effectively into sustainable economic growth, while generating revenue for our treasury from their sale». The issue of exhaustion of natural resources, their inefficient use is recognized as one of the most pressing issues in our country.

At the same time, in order to effectively implement favorable environmental management, it is necessary to ensure the appropriate level of ecological control and surveillance in the legislation, that is, the re-adoption of the Environmental Code of the Republic of Kazakhstan is an urgent issue on the agenda.

In his Address to the people of Kazakhstan «Kazakhstan In A New Reality: Time For Action» dated September 1, 2020, the President of the Republic of Kazakhstan Kassym-Zhomart Tokayev stated: «Environmental protection and ecological development come to the fore on the agenda of Kazakhstan. The whole civilised world is dealing with this issue. A draft of a new Environmental Code has been developed to solve a number of systemic problems. I ask the Parliament to consider and adopt this important document by the end of the year. I instruct the government to start implementing practical measures to improve the environmental situation. Long-term plans for the conservation and sustainable use of biological diversity should be approved. Legislatively and normatively, it is necessary to protect national parks and other natural resources of Kazakhstan, to toughen the criminal and administrative prosecution of citizens who commit offenses in this area. It is necessary to pay due attention to the ecological education of the younger generation in schools and universities. The environmental campaign «Together – clean Kazakhstan», designed to strengthen environmental values in society, should be carried out on a systematic basis. In the medium term, economic growth should become increasingly green. Therefore, the foundation for deep decarbonisation should be laid now. I instruct the Government, in cooperation with the scientific community and the private sector, to develop a package of proposals for «green growth» ».

The issues of improving the system of ecological control and surveillance in the field of environmental protection have always been and will always be in the focus of representatives of environmental law science. Their research has made a significant contribution to the solution of organizational and legal issues of ecological control and supervision, deepened theoretical understanding of the role and capabilities of environmental control. Most of the previous research was based on the experience of ecological control and surveillance bodies during our country's

transition to a market economy, the analysis of environmental legislation at that time and the conditions of the old economic system. However, there is no consensus in the legal literature on the specific features, legal nature and functional purpose of ecological control and surveillance. There is no consistency in understanding the content of ecological control and surveillance terms, which is primarily due to the relative novelty of the problem. The need to separate them is of practical importance due to the fact that the current legislation allows them to be combined and implemented separately by different bodies in terms of structure, tasks and powers. In addition, the integration of control and surveillance functions in one body does not diminish the importance of their separation. First, law violations may occur in the course of environmental control, which can be eliminated through surveillance. Second, the powers of control and surveillance of the same body may not be the same when exercised in relation to different objects. Third, the uncertainty of the regulatory parameters of control and surveillance functions leads to the abuse or non-performance of the powers of control and surveillance functions by government agencies.

Currently, in the context of greening and deep «decarbonisation» of the Republic of Kazakhstan, in the context of activation of remote monitoring objects and automated monitoring system of ecological control, in accordance with the "Digital Kazakhstan" program, the role of ecological control and surveillance in the state environmental functions system, in environmental protection and in the use of nature requires an in-depth theoretical and practical analysis and study in the environmental law science field.

The above issues determine the relevance of the dissertation research, the need for scientific study on ecological control and surveillance in the environmental protection field.

The level of the study. The legal literature pays much attention to the theoretical issues of ecological control and surveillance. Currently, there are a number of works in the field of environmental law related to ecological control and surveillance. They show the theoretical and scientific-practical significance of this issue.

The works of well-known domestic legal scientists such as D.L. Baideldinov, N.B. Mukhiddinov, S.B. Baisalov, A.E. Bekturganov, S.D. Bekisheva, A.E. Erenov, S.T. Kultelev, Zh.Kh. Kosanov, S.Z. Zimanov, B.Zh. Abdraimov, A.S. Stamkulov, A.E. Esenaliev, N.A. Bekbergenov, S.P. Moroz, A.H. Khadzhiev, B.A. Zhetpisbaev, L.K. Erkinbayeva, G.T. Aigarinova can be noted in the field of environmental control and surveillance. In addition, A.P. Asylbekov, A.S. Akhmetov, M.E. Eszhanov, A.Zh. Tukeev, N.S. Baimbetov and others contributed to the study of issues of state control in the environmental protection field.

Moreover, scientific works of scientists such as S.A. Bogolyubov, B.V. Erofeev, O.S. Kolbasov, M.M. Brinchuk, A.I. Zhmotov, V.V. Petrov, Yu.S. Shemshuchenko, V.P. Belyaev, N.V. Rumyantsev, V.M. Gorshenev, I.B. Shakhov, L.G. Konyakhin, I.F. Pankratov, G.I. Osipov, A.K. Golichenkov, O.I. Krassov, A.I. Bobylev, S.A. Balashenko, G.V. Atamanchuk, A.E. Lunev, O.L. Dubovik, V.F. Sirenko, A.V. Pikulkin, M.S. Studenikina, N.V. Kichigin, Ya.A. Tikhomirov and others from

the CIS countries are of paramount importance in studying the issues ecological control and surveillance in the environmental protection field.

It should be noted that currently there are research works related to ecological control in the environmental protection field. In particular, the works of A.P. Asylbekov (Problems of legal regulation of environmental control in the Republic of Kazakhstan. Almaty, 1998), A.E. Esenaliev (Legal fundamentals of state administration in the environmental protection field. Almaty, 2003), A.S. Akhmetov (Legal regulation of control in the field of environmental protection. Taraz, 2004), A.A. Kvashin (Legal Problems of Improving State Administration in the Sphere of Environmental Protection and Nature Use in the Republic of Kazakhstan in Market Conditions. Almaty, 2006) are notable. However, there are no scientific studies that comprehensively study the issues of ecological control and surveillance in the environmental protection field. Therefore, taking into account the current administrative legal reforms and legislative practice, a need emerges to conduct a comprehensive study on the legal fundamentals for ecological control and surveillance in the environmental protection field in the Republic of Kazakhstan.

The study object is the public relations arising in the course of ecological control and surveillance in the environmental protection field in the Republic of Kazakhstan.

The study subject is the national legislation in the environmental protection field, the legal mechanism for ensuring the legal regulation of ecological control and surveillance.

The study purpose is a comprehensive study of theoretical and practical aspects of ecological control and surveillance in the environmental protection field in the context of the transition of the Republic of Kazakhstan to sustainable development, identification of new trends in ecological control and surveillance and practical recommendations for their solution.

The study objectives in accordance with the research purpose are:

- to reveal the content, determine the relationship and specify the features of the ecological control and surveillance concepts in the environmental protection field;
- to define the role of ecological control and surveillance in the environmental protection field as a function of public administration;
- to study of the formation history of bodies exercising state control in the environmental protection field;
- to investigate the issues defining and implementing the concept and importance of state environmental control in the environmental protection field;
- to define issues arising in the organization of industrial ecological control in the environmental protection field and legal regulation of its implementation;
- to search issues of legal regulation of public environmental control in the environmental protection field;
- to analyze foreign experience in improving ecological control in the environmental protection field;
- to develop proposals on organizational and legal issues of improving the state environmental control in the environmental protection field.

Methodological basis of the study. The research used general scientific and cognitive methods: historical and legal methods, analysis and synthesis, logical, systemic and structural functional methods, methods of comparative legal analysis.

Theoretical basis of the study. The theoretical basis of the dissertation is published scientific and theoretical works of domestic and foreign scientists not only in the environmental law field, but also in constitutional law, administrative law, civil law, business law and other fields, messages of the President of the Republic of Kazakhstan to the Kazakhstani people, textbooks, monographs, abstracts of dissertations, publications in periodicals, as well as statistical data, materials from sources of information, government agencies in the environmental protection field.

Articles on ecological control and surveillance published in periodicals were also taken into account.

The normative basis of the dissertation study is the Constitution of the Republic of Kazakhstan, the Environmental Code of the Republic of Kazakhstan and other regulations in the environmental protection field.

The practical basis of the study is data from government agencies and public associations in the environmental protection field.

Scientific novelty of the study. The scientific novelty and relevance of the achieved results is the further development of the theory of managerial relations in the field of environmental protection and nature management in the context of the country's transition to sustainable development. Moreover, this dissertation is one of the works prepared in the state language, designed to comprehensively study the legal framework of ecological control and surveillance in the environmental protection field in the country's transition to sustainable development, modernization and digitalization.

This research is a comprehensive legal study that reflects the changes that must take place in the ecological control and surveillance system in the field of environmental protection and nature management in the country's transition to sustainable development. These changes are related to an increase in the number of nature users, the development of private property relations for certain types of natural resources and an increase in environmental quality requirements. In its turn, this leads to the emergence of new control structures and control tools.

The study considers in detail the significance of ecological control and surveillance in the environmental protection field, types of ecological control and the problems encountered in their implementation. In conformity with the Development Strategy «Kazakhstan – 2050», the President's Address of September 1, 2020 «Kazakhstan In A New Reality: Time For Action», further strengthening of the legal fundamentals of the ecological control and surveillance system is becoming increasingly relevant at the current development stage of market relations.

The system of ecological control and surveillance of environmental protection and nature management does not require only legal support. Organizational conditions ensuring compliance with the legal requirements implementation are also important.

Research and scientific understanding of the practice of ecological control and surveillance in the environmental protection field during the development of public

relations in the context of the country's transition to sustainable development, analysis of foreign experience in improving environmental control, as well as modern legal fundamentals of public administration in the field of environmental protection and natural resources allowed to justify the introduction of certain rules in the dissertation that may affect the improvement of the institute of ecological control and surveillance.

Theoretical relevance of the study. The study results and conclusions are of great importance for the development of environmental law. The study results and conclusions can be applied in conducting research in the ecological law field and theoretical courses on «Ecological Law» in higher education institutions.

Practical relevance of the study. The study results and conclusions can be used to improve ecological legislation, as well as to enhance the activities of government agencies, environmental organizations and public associations in the environmental protection field.

Empirical basis of the dissertation. In the research, an extensive detailed study was conducted on the experience of government agencies, environmental organizations and public associations in the environmental protection field and statistics and other data were widely used.

The main conclusions proposed for the defense:

1. With a view to preventing the repeated implementation of the same activity by several bodies and mutual “conflict” between the competent state bodies in the environmental protection field, the gap between ecological control and ecological surveillance has been identified. Ecological control is the activity of state bodies and public organizations, which may be subject to restrictive measures without the right to apply methods of influence on the inspections and monitoring results of economic and other activities of individuals and legal entities in correspondence to the requirements established by environmental legislation of the Republic of Kazakhstan.

Ecological surveillance is the government agencies activity aimed at verifying compliance with the environmental legislation requirements by individuals and legal entities with the right to use methods of influence used to prevent the occurrence of dangerous consequences for the environment, prevention and control of environmental offenses.

2. Ecological control and ecological surveillance is an integral part of the public administration institute in the environmental protection field. State ecological surveillance is carried out in veterinary, in plant quarantine, in sanitary and epidemiological health of the population, in the use of nuclear energy for entities operating with nuclear facilities of potential radiation hazard categories I and II, in the protection, the reproduction and the use of wildlife, in the protection, the conservation, the use of forest resources, in reforestation and afforestation, in the field of specially protected natural areas.

3. For the prevention of parallelism and duplication in the activities of state control bodies in the environmental protection field, for the environmental protection and the rational use of nature, as well as for the clear coordination of control activities of executive bodies in the environmental protection field, it is necessary to ensure their powers and interdepartmental cooperation.

4. Industrial environmental control, which is an important link in the environmental protection field, is a type of environmental control carried out by individuals and legal entities engaged in special nature use to ensure compliance with the environmental legislation of the Republic of Kazakhstan and increase compliance with environmental requirements. The peculiarity of industrial environmental control is determined by the need for an effective system of training, retraining, certification and advanced training of qualified specialists in this field, taking into account the state of digitization and the need to use automated systems.

5. The Unified State Monitoring System is a unified system created to make in timely management and economic decisions by monitoring constantly the quality and condition of the environment in the environmental protection field, collecting and analyze data automatically. It is necessary to create a Unified State Monitoring System for continuous monitoring of the quality and state of the environment. This is due to the fact that in Kazakhstan the system of registration and online transmission of data on the ecosystem state is not fully formed, respectively, the indicators and data of checkpoints are not centralized, integrated and not fully generalized.

6. Register of persons violating the legislation in the environmental protection field is a set of data registered on paper and (or) electronic media, providing identification of individuals and legal entities brought to justice on the basis of a court decision that has entered into force in case of legislation violation of the Republic of Kazakhstan. The information in this register is the basis for the emergence of special nature use rights, licenses and permits for the use and acquisition of natural resources and certain activities in the environmental protection field, the Government of the Republic of Kazakhstan or local executive bodies when making decisions of bodies, in the process of concluding contracts (agreements) for nature use, concluded in the manner prescribed by the legislative acts of the Republic of Kazakhstan. The transfer of nature use rights to persons registered in this register is not allowed.

Testing of study results. The dissertation was prepared at the Department of Jurisprudence of the Khoja Akhmet Yassawi International Kazakh-Turkish University. The study results and conclusions were discussed at an extended scientific seminar of the department.

Publication of study results. 13 scientific articles on the dissertation theme were published. In particular, 2 articles were published in international scientific journals included in the database of Scopus, 8 articles in scientific journals, 3 articles in the journals approved by the Control Committee for Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan.

The dissertation volume and structure. The total dissertation volume is 148 pages typed on a computer. The dissertation structure corresponds to the main goals and objectives of scientific research. The dissertation structure contains the main part, conclusion and list of references, consisting of normative references, designations and abbreviations, introduction, three chapters and eight chapters.