

COMPARISON OF STANDARTS OF ECOLOGICAL STATE LAW – EAEC MEMBERS

E. A. Akopova

Al-Farabi Kazakh National University Almaty, Kazakhstan.

E-mail: akopova-elen-25@list.ru

Key words: Eurasian Union, ecological lawmaking, unification, ecological situation.

Annotation. In the analysis of the status and structure of ecological legislation matter in the EAEC countries should be sever two directions: the first – about the sources of law especially the lawmaking process and its outcomes in separated EAEC countries; and the second – about trends in ecological legislation in the Union in whole. It is possible to say that trends of lawmaking development and ecological law structures' formation differ in uniformity. Under state control in the sphere of ecology it is necessary to understand executive and administrative activities of relevant government authorities which aims to environmental efficient ensure and environmental protection.

In the field of environmental protection the Agreement was signed by Republics for cooperation in the sphere of ecology and environmental protection. In addition it was decided to establish the Interstate Environmental Council. One of the most important forms of work is normative establishment allowing to unify ecological lawmaking in a certain degree. The ecological situation is gradually becoming more important factor in the development which affecty on all spheres of political and economic wellbeing of the State.

The Republic of Kazakhstan has been major qualitative changes since gaining of independence. Kazakhstan became an independent state; the economic system of society and its political system were changed radically. Reform of the legislative, executive and judiciary was persuaded, they were brought into compliance with the principle of power separation [1].

Constitution was adopted in the Republic of Kazakhstan which valids now. In addition considerable number of legal law texts in the sphere of economy, environmental protection and environmental management were passed, and also the Civil code, codified law of the land, subsoil, environmental protection law and etc. were adopted.

During the modern period the research and assessment of the reasons of ecological crisis have basic value and can have a great influence on process of improvement of the legislation.

Annually in Kazakhstan amounts of natural resources increases, which is typical for all countries with resource oriented economy, testify to the effect that a trend gains overexploitation of nature. The Government does not take into account the warnings of scientists about the necessity for consistent and systematic monitoring of the environmental impacts of macroeconomic policy [2].

It is possible to note incompatibility and a contradiction between how the mankind constructs relation to environment throughout its history in reality and the illusion reigning still about opportunities of improvement of the existing ways of production and legal regulation. The current method of management, based on the traditionally energy raw materials usage, can lead to a global environmental catastrophe at present. Alternative kinds of energy sources (solar, wind and etc.) are not able to compete with contemporary energy necessities of satisfaction.

At present time searches of optimum legislative regulation have to be concentrated on essentially new basis. As practice shows, any attempts to fit or improve the operating legal mechanism in relation to momentary needs of the economy based on the existing power do not have an effect in principle, and the conditions of the accruing ecological crisis are unpromising. The ecological legislation which is based on outdated approaches can even promote deepening of ecological crisis if it follows ideas of anthropo-

centrism - protection of the environment surrounding the person with his destructive ambitions and with generation of illusion of determination of unsoluble problems.

Currently analysis of the environmental situation and the legislation can and should lead to a reassessment of the relationship of person to himself/herself and nature and also a choice of directions of development in the future. The value of such conclusions and estimates has to be quite comparable to the ecological modeling results which were presented by founders of the Roman club to the world community half century ago and have defined ecological priorities origin in policy and the legislation of the developed and many developing countries. At the new stage of ecological problems development just neither has worsened nor has procured, unfortunately, other quality [3].

Nevertheless, there is out of the situation if in the near future in Kazakhstan, as in other states of the Eurasian Union, all kinds of legislative regulation would be catered to qualitatively different system of production and consumption, and will be based on a fundamentally new basis, which are capable of harmonize not only at the international level, but also harmonization of the interests of the world community with the possibilities of the biosphere.

Accumulated problems and challenges of environmental legislation for objective and subjective reasons could not find their exhaustive permission. Their relevance is not only preserved, but even strengthened. In connection with needing of theoretical judgement the problems of formation of the ecological legislation for new conditions become the ripened necessity and put at the forefront.

During the collapse of the Soviet Union the various doctrines of ecological law or environmental law began to get active dissemination as absorbing as the kinship of both varieties - of environmental and natural resource rights and as a division between them and without it. In our opinion at present time the conceptual approaches for the development of environmental law should be based not only on things as much of a proper, including historical patterns, the transformation of the nature and essence of the ecological relationships. In broad terms in the scientific literature this term denotes the whole complex of social relations that arise in the interaction of nature and society and are the subject of environmental and legal regulation. At the same time the usage and consumption of natural resources for human satisfaction needs and environmental protection are considered as two independent and, in principle, contradictory directions of such regulation [4].

However these differences in themselves are rather conventional as it is hard to find in the modern era evidence of comparability of efforts and costs of mankind on the environment. It is possible to establish consumer attitude towards nature. Therefore it would be correct to speak not about a contradiction of one interest to another, and only about absence of balance of interests.

Meanwhile from the historical point of view such "contradiction" was not put initially and generated by the person and exists only during rather short period of formation and development of a civilization - only about one thousand years. Conceptually ecological and legal regulation is based at usage and conservation which can and has to exist as uniform process and to be summarized by the legislation as, perhaps, not homogeneous but uniform by the nature, the public relations. This approach to a subject of regulation of the ecological legislation isn't something new, and only serves as manifestation of historical regularity and objective tendencies. Reflected in norms of religion, morals and customs, it confessed the majority of mankind up to this millennium and as it is believed, does not have alternatives of a survival in the future. Therefore opposition and isolation of interests of the nature and society as everything has to be subordinated only to one main goal – a survival and preservation is senseless in principle. Analysis of global issues and forecasting environmental situation on the planet - the subject of integrated efforts of scientists from many countries and industries. It is obvious that without the corresponding scientific base complex estimates of further conceptual development of approaches to legal regulation will be impossible, and the legislation formed on vicious conceptual base remains the declaration that will promote probably increase of ecological crisis [5].

Contained in the Basic Law - the Constitution of Kazakhstan and Russian standards have a public law nature. But when providing or protection of one's rights and legitimate interests moves with constitutional to other level (civil, administrative and legal, etc.) so appropriate cases both public, and private-law norms and institutes start working. The mechanism of legal regulation is organized thereby that on the one part the branches of law can be divided into private legal and public law only conditionally, and on the other part the law system division of the private and public sector in general is beyond the scope, as it is larger

than industry, system of education. Nevertheless despite the increase in the number of private environmental law and legal elements the bases still remain publicly-legal norms and institutions. Accordingly methods of protection of the ecological subjective rights are respectively differentiated.

In our example, enshrined in the Constitution of public interest - the environment (favorable, particularly for human life and health) is implemented by virtually the entire arsenal of the mechanism of legal regulation. This predetermined complex and specific nature of ecological law and legislation, and explains the need for a combination of different-institutions, rules, techniques and methods of ecological and legal regulation. An important direction in the development of ecological and legal lawmaking should be development of additional mechanisms for improving the legal regulation in the sphere of relations. In connection with one of the problems that legislator will confront inevitably, it is the necessity for proper consideration of environmental public interest for inclusion in the environmental legislation of certain contractual elements and elements of property law.

At present time in ecological legislation it can be observed the availability of such public-legal institutions and rules that can be grouped as: ownership of certain types of natural features and resources, various types of wildlife, environmental easements and other rights; obligations relations (agreement on natural resources and other transactions in this area); civil legal ways to protect environmental rights (environmental torts, protection of the rights of creditors and other environmental obligations); complex institutions environmental law, including private law rules (licensing of nature as an element of special legal capacity of a legal entity, payment of environmental impact, environmental auditing, environmental requirements during the transition of ownership of the assets of the company and others). The development of modern Russian and Kazakh environmental legislation periodically generates a number of problems associated with the inclusion of the legality of certain contractual elements and elements of property law; relationship boundaries with other recent actions by nature norms; using the civil legal ways to protect environmental rights; the action of the civil-law tort institute in the field of ecological and legal relations. In addition the emergence of a new situation in the law-making translates into practice a long scientific debate regarding the delineation of branches of law.

The need for convergence between disparate systems is due to legislative needs of the international community to jointly address a variety of common tasks. This involves establishing, where possible, the general principles and rules of regulation. In areas such as the environmental protection, customs treatment, transport, health and so on, the general principles would facilitate a coordinated policy of countries - participants of interstate or union of countries united by a common geographical space. In the sphere of ecology the specified process goes quicker to force of that the adjustable public relations possess bigger uniformity and insignificant politicization [6].

Certainly the coordinated development is not end in itself. If the specific problem can be solved at the national level and for this purpose enough own means, there is no need to resort to international aid.

Coordinated development of the environmental legislation of the new generation with the laws of foreign countries is considered today as one of the basic principles of the laws of the formation of the entire space of the Eurasian Union. In this case, it is obvious that today this process is not based on a parity basis in any case by virtue of differences in the development levels of environmental legislation in the countries of the EAEC and foreign developed countries. It certainly does not limit the possibility of borrowing achievements, among which rightly the Legal Responsibility Institute, the theory of the mechanism of legal regulation and etc. [7].

Absence of uniform understanding of the corresponding categories in the legal theory and legislative practice, a synonymous of the concepts "harmonization" and "unification" of a legal lexicon are generated by some ambiguities and divergences during the analysis of process of rapprochement of legal systems.

Harmonization which is understood by some authors as the purpose, allows to consider this concept as patrimonial, including such "mechanisms and ways which are peacefully coexisting within harmonization, as unification, differentiation and definition of rules of the game", the coherences providing the highest level and compatibility of the harmonized systems - the ecological legislation.

In the modern theory of law as a generic concept examines the development of a coherent legal, combines four basic forms or direction [8].

This is:

- 1) convergence of legislation, when defined in the general course of any trade, development directions and stages of convergence;
- 2) harmonization of legislation with the agreed common approach, the concept of development of legal systems of each state, the development of common law principles and the individual decisions;
- 3) adoption of analog legislative acts;
- 4) unification of legislation with the development and introduction of the mandatory uniform legal rules and regulations.

Taking into account objectives of the coordinated legislative development also the ratio of these forms among themselves changes. For example, the principles can be a means of convergence, harmonization and unification. Each of the called directions depending on goals allows to use concrete ways of mutual coordination of legislative systems. The search of optimal mechanisms and the establishment of the right combination of legal convergence means, harmonization and unification of national legislations require huge efforts of theoreticians and developers of legislation [9].

Proceeding from the above classification of concepts, it is possible to speak about the begun process of "convergence" within the coordinated development of legislative systems. This is confirmed by modern trends codification of environmental legislation in the Union countries. Of course such conclusion is not categorical or decisive. Considering complexity and flexibility of the derivative processes, legislative acts "convergence" or separated platforms sometimes can develop into "harmonization", for example, in case the matter is about separate mechanism elements of ecological insurance, especially protected objects and territories or ecological licensing, and even in "unification" in questions of ecological rationing and standardization. In any event it is not always simple to differentiate these processes.

Operation on the formation of new modern environmental legislation of Kazakhstan, Russia and other EAEC countries is the legal systems convergence. Harmonization of legal systems occurs in areas such as ecological insurance, the legal regime of specially protected elemental territories and objects, the environmental licensing. Unification can be observed concerning ecological rationing and standardization.

REFERENCES

- [1] Kultelev S. T. Environmental law of the Republic of Kazakhstan: a tutorial. Almaty, 2003. 238 p. (in Russ.).
- [2] Imakova G.U. A political mechanism to ensure environmental safety of the Republic of Kazakhstan. Sayasat. 2002, April. 50-53 p. (in Russ.).
- [3] Bogolyubov S.A. Environmental law: textbook for high schools. M.: «NORMA» publishing house (Publ. group NORMA-INFRA-M), 2001. 535p. (in Russ.).
- [4] Tikhomirova L.A. The legislation of the Russian Federation on the protection of the environment: problems of realization: monograph. M.: ATISO, 2008. 32 p. (in Russ.).
- [5] Ushakov N.A. International law: textbook. M: Yurist, 2005. 375 p. (in Russ.).
- [6] Flek D. International law between fragmentation and integration: challenges for theory and practice // Russian law journal. 2011. N 6. (in Russ.).
- [7] Shamsutdinov E.R. The greening of the Russian legislation in the context of the concept of sustainable development. Juridical world. 2008. N 1. (in Russ.).
- [8] Zhumagazhinov D.Zh., Ahmedzhanova G.B. Environmental law of the Republic of Kazakhstan: a textbook for students of law majors. Pavlodar, 2007. 137 p. (in Russ.).
- [9] Evaluation of environmental factors. Industry of Kazakhstan. 2003. N 12. 52-58 p. (in Russ.).

ЛИТЕРАТУРА

- [1] Культеев С. Т. Экологическое право Республики Казахстан: Учебное пособие. – Алматы, 2003. – 238 с.
- [2] Имакова Г.У. Политический механизм обеспечения экологической безопасности Республики Казахстан // Саясат. – 2002, апрель. – 50-53 с.
- [3] Боголюбов С.А. Экологическое право: Учебник для вузов. – М.: Издательство «НОРМА» (Издательская группа НОРМА-ИНФРА-М), 2001. – 535 с.
- [4] Тихомирова Л.А. Законодательство Российской Федерации об охране окружающей среды: проблемы реализации: Монография. – М.: АТИСО, 2008. – 32 с.
- [5] Ушаков Н.А. Международное право: Учебник. – М.: Юрист, 2005. – 375 с.
- [6] Флек Д. Международное право между фрагментацией и интеграцией: вызовы для теории и практики // Российский юридический журнал. – 2011. – № 6.
- [7] Шамсутдинов Э.Р. Экологизация российского законодательства в контексте Концепции устойчивого развития // Юридический мир. – 2008. – № 1.

[8] Жумагажинов Д.Ж., Ахмеджанова Г.Б. Экологическое право Республики Казахстан: учебно-методическое пособие для студентов юридических специальностей. – Павлодар, 2007. – 137 с.

[9] Оценка факторов экологической безопасности // Промышленность Казахстана. – 2003. – № 12. – 52-58 с.

ЕАЭО-НА МҮШЕ МЕМЛЕКЕТТЕРДІҢ ЭКОЛОГИЯЛЫҚ ҚҰҚЫҒЫНЫҢ ЕРЕЖЕЛЕРІН САЛЫСТЫРУ

Э. А. Аكوпова

Өл-Фараби атындағы Қазақ ұлттық университеті, Алматы, Қазақстан

Тірек сөздер: Еуразиялық одақ, экологиялық заңнама, бірегейлендіру, экологиялық ахуал.

Аннотация. ЕАЭО мемлекеттерінің экологиялық заңнамасының құрылымы мен жағдайы мәселелерін сараптауда басты екі бағытты атап өтуге болады: бірінші – ЕАЭО-тың жеке мемлекеттеріндегі құқық көзі, заң шығару үрдісінің ерекшеліктері мен оның қорытындылары жөнінде және екінші жалпы Одақтағы экологиялық заңнаманың дамуының беталысы жөнінде. Атап кетуге болатын жайт, заң шығарушылықтың даму беталысы мен экологиялық заңнаманың құрылымының қалыптасуы біртектілікпен ерекшеленеді. Экология саласындағы мемлекеттік басқару түсінігі ретінде қоршаған ортаны қорғау мен табиғатты тиімді пайдалануды қамтамасыз етуге бағытталған сәйкес мемлекеттік ұйымдардың басқарушылық-ұйымдастырушылық әрекетін түсінуге болады.

Қоршаған ортаны қорғау саласында республикалар арасында қол қойылған қоршаған ортаны қорғау мен экология саласындағы өзара әрекеттесу келісімшарты қызмет етуде. Сонымен қатар, мемлекетаралық экологиялық кеңес құрау жөнінде шешім қабылданған. Жұмыстың маңызды бағыттарының бірі экологиялық заң шығарушылықты белгілі бір деңгейде бірегейлендіруге мүмкіндік беретін нормативтік актілер қабылдау болып табылады. Экологиялық ахуал біртіндеп мемлекеттің экономикалық және саяси әл-ауқатына әсер етуші маңызды фактор болып табылады.

СРАВНЕНИЕ СТАНДАРТОВ ЭКОЛОГИЧЕСКОГО ПРАВА ГОСУДАРСТВ – ЧЛЕНОВ ЕВРАЗЭС

Э. А. Аكوпова

Казахский национальный университет им. аль-Фараби, Алматы, Казахстан

Ключевые слова: Евразийский союз, экологическое законодательство, унификация, экологическая ситуация.

Аннотация. Анализ состояния и структуры экологического законодательства в странах ЕвразЭС следует разделить на два направления: первое – об источниках права, особенности законодательного процесса и его результаты в разделенных странах ЕвразЭС; и второе – о тенденциях в области экологического законодательства в союзе в целом. Можно сказать, что тенденции законодательного процесса развития и формирования структур экологического права отличаются в единообразии. Под государственным контролем в сфере экологии необходимо понять исполнительную и административную деятельности, соответствующие государственным органам, обеспечивающие экологическую эффективность и охрану окружающей среды.

В области охраны окружающей среды республиками было подписано соглашение о сотрудничестве в области экологии и охраны окружающей среды. Кроме того, было решено создать Межгосударственный экологический совет. Одной из наиболее важных форм работ является нормативная, позволяющая унифицировать экологическое законодательство в определенной степени. Экологическая ситуация постепенно становится более важным фактором развития общества, которая влияет на все сферы политического и экономического благополучия государства.

Поступила 27.01.2015 г.