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### Section 32. Jurisprudence

## ECOLOGICAL SAFETY AS THE MOST IMPORTANT ELEMENT OF ECOLOGICAL FUNCTION OF THE STATE

**Abstract:** *The ecological factor in modern conditions exerts the determining impact on evolution of state functions. Consequences of environmental disasters can have irreversible character. In this connection, more and more attention is paid to ecological function of the state. In the submitted article concept, content of ecological function of the state, concept of ecological safety as most important element of ecological function of the state shall be analyzed, as well as necessity of such ecological function element as the ecological safety of the state, ways and measures ensuring ecological safety shall be proved.*

**Key words:** *ecological function of the state; ecological safety; condition of security; ecological rights and interests, anthropogenic activity, measures for ensuring protection, society.*

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### Introduction

Ecological function of the state in modern conditions is independent and, moreover is one of the main functions of the state. The need for realization of ecological function of the state arises when there is a public necessity for the solution of the tasks connected with environmental protection and environmental management. At the same time, content of function at different stages of state development has essential difference, it is defined by the concrete state interests of at this or that stage [1, page 177]. N.D. Vershilo specifies that «ecological function has to be not only one of priority functions, but also fundamental, since it is meant to exert impact on other state functions and finally to keep the environment for present and future generations» [2, page 34].

### Materials and Methods

The main purpose of state ecological function is expressed in providing a scientifically grounded correlation of ecological and economic interests of society for ensuring state sustainable development, to create necessary guarantees for realization and protection of human rights on clean and favorable for life and health environment.

Nowadays, in view of importance of environmental problems, content of state ecological

function is filled with new content and shall be an activity for protection, reproduction and improvement of the environment, rational use of natural resources, disposition of natural resources which are owned by the state for the benefit of society, on ensuring ecological safety» [3-5], on protection of the ecological rights of citizens and the organizations [6, page 44-45; 7, page 10-14].

Allocation of one or another kind of activity within state function requires existence of public need, and also (considering that any state function is implemented by means of own, legal and organizational forms) special legal and organizational mechanism [8, page 71].

If state activity on disposal of natural resources and ecological rights protection have a distinct subject domain within ecological function (different from environmental protection and rational use), which is caused by public requirements and which have a normative expression in Art. 12, 48 of the Constitution of the Kyrgyz Republic (KR), have special legal and organizational enforcement mechanism, then there are certain questions concerning ecological safety ensuring. In particular, whether ecological safety ensuring is an independent public requirement along with environmental protection and rational use of natural resources ensuring? Whether there is a special set of legal and



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organizational measures for allocation and implementation of such kind of activity within the state ecological function?

For explanation of this question, it is necessary to consider a concept of ecological safety. Article 2 of the Law of KR «On environmental protection» of June 16, 1999 considers ecological safety as a condition of security of vital interests of person, society, environment security as conditions and subsistence of person and society from threats resulting from anthropogenic and natural impacts on them [9, Art. 2].

The Concept of national security of Kyrgyz Republic approved by Presidential decree of July 13, 2001 №221 as an element of national security of KR considers ecological safety, and considers ecological sphere as threats of national security. According to the Concept, threats of ecological safety are caused by special vulnerability of mountain habitat from natural and anthropogenic influence, unreasonable economic activity, including:

- negative impact of human economic activity to the environment;
- insufficient effectiveness of system of caution, prevention and elimination of natural, technogenic and environmental disasters;
- emergencies connected with destructions and material losses, causing damage to the environment;
- unsatisfactory condition of uranium tailings dams;
- irrational use of natural resources and also the funds allocated for remediation of consequences of natural, technogenic and environmental disasters;
- increase of population health vulnerability from negative impact of the environment;
- negative ecological situation in the territory of neighboring states;
- potential danger of possible diversions on hydro dams, tailings dams and other strategically important objects [10, section III].

Thus, the question of necessity of ecological safety ensuring can be considered as removed.

The analysis of a number of scientific works on legal questions on ecological safety ensuring shows that such activity is considered not only as its independent kind along with environmental protection and rational environmental management ensuring [3-5], but also as the activity replacing them. For example, ecological function is understood as «objectively necessary, purposeful, legislative caused direction of the state activity for society ecological safety ensuring and carried out in ecological sphere» [11, page 9]; «carried out in ecological sphere, main activities of any state on sustainable development and environment ecological safety ensuring» [12, page 61].

Other scientists, for example Gizzatullin R.H., comes to conclusion that there is no public need for ecological safety ensuring. According to him, the

condition of security of vital interests of person, society, state and environment quite stays within solution of such public requirements as environmental protection and rational use of natural resources. Moreover, he refers to the fact that allocation of ecological safety ensuring as independent activity of the state within ecological function requires formation of own organizational legal mechanism of its realization [8, page 80].

There are also numerous scientific definitions of ecological safety. In particular, it is defined as:

– «a condition of security of vital ecological interests of the person and first of all rights on clean, healthy, favorable for life environment» [13, page 545];

– «a condition of security of social, economic, ecological rights and legally protected interests of citizens, material, cultural and other values of society and state, economic and other interests of enterprises, organizations, institutions and business owners from harmful impact of negative factors of the environment caused by anthropogenic impact on it and also from consequences of ecological incidents and disasters» [14, page 366];

– «system of political, legal, economic, technological and other measures aimed at providing guarantees of security of environment and vital interests of person and citizen from possible negative impact of economic and other activity and threats of emergency situations of natural and technogenic character in present and future time; condition of security of vital interests of person, society and environment from the threats resulting from anthropogenic and natural dangerous influences» [15];

– «element of national security aimed at providing realization of constitutional right of everyone on favorable ecological environment guaranteed by the state and reached by means of establishment of influence admissible limits in the conditions of possible negative impact of economic and other activity, emergency situations of natural and technogenic character, its consequences [16, page 5-6], etc.

In other areas of scientific knowledge ecological safety is understood, for example, as ability of the state to control, reduce and eliminate ecological dangers of different scale revealed and estimated by scientific methods to ensuring welfare of society and human health, political, economic and social stability [17, page 77-78].

At the same time, not all scientists consider ecological safety as activity of the state within state ecological function. So, for example, Shulenina N.V. considers ensuring ecological safety as the basic principle of environmental protection [18, page 54], Smyshlyaev V.A. – as the major perspective purpose and task of activity on renewal and maintaining favorable state of environment [19, page 44].

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In general, theoretical and legislative definitions show that the basic component of various ecological safety concepts is its understanding as a condition of security of various objects and their vital interests (including ecological interests) from various factors and sources of dangerous influence. An object of ecological safety, according to the law of KR «On environmental protection» is the person, his life, health, vital interests of the persona, society, environment as a condition and a subsistence of the person. In our view, the fact that the environment is recognized as an object of ecological safety is very important, that is rarely mentioned in literature. In non-legal literature ecological safety is understood as condition of security of the nature, the environment, and the person, society or the state aren't mentioned in principle [20].

The satisfaction of vital interests of the person and society in general, is possible at the certain level of security condition acceptable for them. Such level, in our opinion, is the favorable environment. The concept of favorable environment developed in ecological law science recognizes that such its state is characterized by qualitative (purity of air, soil, water, etc.) and quantitative (sufficiency of natural resources) indicators. Ecological safety ensuring assumes implementation of activity directed to maintenance or achievement and maintenance of such environment state, where are threats to objects of ecological safety caused by factors of environment are absent or minimized [8, page 74].

Favorable state of environment, and consequently, ecological safety is reached and maintained by activity for environmental protection and its rational environmental management. The set of measures for environmental protection composes the mechanism of environment legal protection.

According to Art. 6. of the law of KR «On environmental protection» measures for environmental protection shall include: state accounting, and social and economic assessment of natural resources; environment quality estimation; establishment of ecological requirements to economic or other activity connected with impact on the nature; establishment of payment standards for use of natural resources, discharges, emissions of pollutants, physical and other harmful effects, placement of waste in the environment; impact assessment of economic and other activity (EIA - Environment Impact Assessment ) to the environment; environmental control; environmental assessment; creation of especially protected natural territories; bringing to responsibility of law violators

in the field of environmental protection; limitation and licensing of environmental management, etc.

Surely, ecological safety of the person and society is provided within the above-stated mechanism of environmental protection and rational use, and independent, peculiar legal measures on its ensuring by legislation aren't provided. This is confirmed in works devoted to legal questions of ecological safety, there is no any measure for its providing which wouldn't be a measure of environmental protection and rational use of natural resources of stability [21, page 136].

Also, there is an opinion that the concept of ecological safety is able to offer necessary methodological break in the field of environment protection [22, page 55-57]. At the same time, statement of an environmental problem at level of national security (within which earlier unknown form of safety as ecological safety admits) solves several important problems: gives to a nature-oriented problem the importance of problem of human survival; does an environmental problem as the problem of the highest political priority; concept of ecological safety offers a new basis for solving of nature-oriented problems - the model «foresee and prevent» instead of standard approach as «react and correct»[22, page 65].

It appears that such argument in favor of value of ecological safety in the system of legal regulation of relations «society – nature» is rather convincing. In many respects, even first of all, awareness of environmental protection need on national, and then at the international level has been caused by arisen threats of ecological character to existence of person as biological substance.

### Conclusion

Agreeing with scientists who consider ecological safety as a problem, which the state solves within state ecological function, we believe it is necessary to note that for modern state traditional activity for environmental protection and rational environmental management are insufficient. Environmental risks and threats during present period create need of statement of question about ensuring ecological safety of person, society and environment. The analysis of environmental problems in the Kyrgyz Republic confirms change of priorities in national policy, but at the same time, the ecological vector didn't become a directive in our country yet. Today increase of state attention to environmental problems is vital, that once again emphasizes the necessity of ecological safety ensuring within state ecological function.



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