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SECTION 32. Law

DRAFT OF THE ECOLOGICAL CODE OF THE KYRGYZ REPUBLIC (THEORETICAL ASPECTS)

Abstract: *In 2009 in the Kyrgyz Republic (KR) the first attempt of adoption of Ecological code has been made. In 2017 the draft of the new Ecological code is prepared. Due to the unsatisfactory condition of the ecological legislation, adoption of the Ecological code is considered as a way of improvement of the ecological legislation. In article the concept, value, essence of codification, problems arising under developing the Ecological code of KR, its content is considered, its positive and negative moments are noted. Creation of the Ecological code is proved by need of elimination of gaps and contradictions, cancellation of outdated regulations, need of full and complex regulation of the nature-oriented relations, its adjustment in compliance with the international legislation.*

Key words: *ecological legislation, systematization, codification, ecological code, norms, requirements, safety.*

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Introduction

It is possible to call as general tendencies of development of ecological legislation of the Kyrgyz Republic at the present stage: quantitative increase in number of normative legal acts, entering of the private-law beginnings into the ecological and nature resources law, ecologization of non ecological branches of the legislation.

One of forms of regulating and at the same time substantial development of the legislation is its codification. "It represents the deepest form of legislation systematization, being connected with processing, change, improvement of content of legal regulation" [1, page 17]. At the same time, it is important that "a regulating subject at codification is not only normative legal acts, but also directly legal norms" [2, page 129]. It is undoubted, that for achievement of positive results practical actions for codification have to be coordinated with scientific understanding of a problem and need system theoretical foundation.

Materials and Methods

Since the beginning of 1991 in the Kyrgyz Republic legislation reforming has begun, the head Law "On conservation of nature" of April 17, 1991 has been adopted. However, many provisions of this Law demanded serious amendments, the structure of

control and administration has changed, approach to definition of ecological safety and ecological damage has changed, economic mechanism of conservation, questions of responsibility for ecological offenses needed improvement.

On June 16, 1999 the new head Law – the Law of the Kyrgyz Republic "On environmental protection", established a legal basis for protection of the surrounding environment and guaranteeing rational use of natural resources, has been adopted. At the same time, it isn't possible to speak about effective and complex legal regulation in the sphere of environmental protection and ensuring ecological safety. The main problems of this law are: its declarativity, existence of gaps and fragmentariness in legal regulation of ecological relations, collisions of a number of rules of law. Many provisions of the law specify only basic moments demanding procedural "support" in laws and bylaws. The lack of these procedures leads to the fact that these mechanisms don't work.

In these conditions, the decision shall be an adoption of the Ecological code of KR that will allow to order and improve the content of legal regulation of relations in field of environmental protection and use of natural resources. Adoption of the Ecological code will allow to eliminate the system contradiction between a role of the Law of KR "On environmental



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protection" as normative legal act, which in the most common view defines a circle of public relations regulated by ecological law, and establishes general principles and mechanisms of environmental protection, and the place which it takes in hierarchy of sources of law according to the Law of KR "On normative legal acts of the Kyrgyz Republic" [3], not allowing to consider it as the head law of the ecological legislation.

The positive view on idea of adoption of codified normative legal act in the field of ecological relations is stated by many scientists. So, Yu.S. Shemshuchenko proves the need of the Ecological code by "further greening of economic activity, strengthening of state influence aimed at providing ecological safety, including legislative measures which have to give to environmental policy a system character" [4, page 24]. A.K. Golichenkov, without denying in principle such direction of ecological legislation development, believes that "now in Russia there are no organizational, legal and technical and resource conditions for preparation of the code, though scientific concepts in this direction need formation" [5, page 228].

For the first time A.K. Kadyrov in his work has spoken on practicability of legislation codification on conservation in Kyrgyzstan [6, page 3].

The first attempt of adoption of the Ecological code in Kyrgyzstan has been made in 2009. The draft law was introduced by group of deputies of Zhogorku Kenesh of KR led by O. Artykbayev. In January, 2009 Zhogorku Kenesh of KR has adopted the Ecological code. However, in February, 2009 it has been sent back for revision by the President of KR. Surely, development and subsequent adoption of the Ecological code will be a considerable step in improvement of ecological legislation of KR. The necessity of development of Ecological code is caused by both social, economic and legal reasons.

The social and economic reasons are explained by critical ecologic and economic situation which has formed now. It is characterized by action of such factors as: ecological crisis as a result of ignoring of society ecological safety requirements; gaps of ecological legislation, need of full, complex regulation of the nature oriented relations, reduction of reference norms, its bringing to conformity with international legislation. In these conditions, there is a need of development and adoption of law which would solve ecological problems at the level of our times.

The idea of adoption of codified normative legal act in the field of the ecological relations isn't new. The Ecological code is adopted in Kazakhstan [7] (2007), in France (2000), Sweden (1999) [8, page 584]. In the Russian Federation, Ukraine, Tajikistan drafts of Ecological codes of these states are developed. In 2005 the project of general part of model Ecological code of states-parties of CIS has

been developed [9, page 69]. In this part, it is necessary to study experience of those foreign countries, which have carried out codification of ecological legislation.

The fact of preparation of codified act also raises the legal status of law heading ecological legislation. Preparation of the Ecological code has a set of positive moments, so, for example, in the project of Ecological code have been put norms which aren't provided in the Law "On environmental protection" (ecological permissions, provisions of technical regulation in the field of environmental protection and ensuring ecological safety, access to genetic and biological resources, economic regulation, tools and mechanisms of environmental management); many provisions have been concretized, for example, principles of ecological legislation (in the current law are abstract); economic mechanism of environment protection regulation and environmental management, ecological insurance, audit, monitoring are expanded. The positive moments of this draft law is also the fact that special attention in it was paid to ecological planning and scientific research in the field of environmental protection.

Another plus in draft Ecological code was expansion of rights of public organizations in the field of environmental protection. The coefficient of organizations activity of which is directed or connected with environmental protection today is very low, it is necessary to stimulate their participation in nature oriented activity. Special attention in the draft law was paid to ecological education and enlightenment for sustainable development (chapter 6); ecological information (chapter 7).

In April, 2017 the State agency of environmental protection and forestry under the Government of KR has submitted for public discussion the new draft of the Ecological code of KR in justification of which it is said that it is developed for formation of full and structured system of organizational and legal measures, norms and requirements in the sphere of environmental protection and ensuring ecological safety of the Kyrgyz Republic according to standards of existing national legislation and international ecological law [10]. The offered draft law has been developed by working group formed by the order of State agency of environmental protection and forestry under the Government of KR, with involvement of independent experts and representatives of civil sector, NGO and interested public authorities.

In justification of draft law, it is specified that strengthening of role of major factors influencing the environment, such as: industry development, science and technology, need of mankind for natural resources, as well as economic relations within regional co-operations and all world community,

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demand a new regulation of main requirements in the field of ecological legal relationship and environmental protection taking into account modern challenges [10].

The offered draft law includes norms and requirements regulated by fundamental laws of KR in sphere of environmental protection, such as: "On environmental protection", "On protection of atmospheric air", "On production and consumption waste", "On environmental examination", "General technical regulations on ensuring ecological safety in the Kyrgyz Republic" and also new provisions taking into account legal aspects within international obligations of the Kyrgyz Republic in environmental protection. As all above-mentioned laws of the Kyrgyz Republic provide generally similar norms and requirements for protection of separate natural resources, for the purpose of structuring and standardization of the nature protection legislation, in draft Ecological code of KR these norms are united. At the same time, process of codification shouldn't be considered as mechanical merge of several laws standards and bylaws, serious conceptual processing of a number of main ecological and legal mechanisms is required.

The main aspects of ecological regulation, in particular environmental management rationing, environmental examination, control and monitoring, etc. and also requirements for ensuring ecological safety in offered project are harmonized with requirements of international legislation taking into account today's realities. It is confirmed, that norms of rational environmental management and environmental protection are based on ecosystem approach and use of best existing available technologies.

Besides, draft of Ecological code of KR has fixed the new provisions concerning: ecological education and enlightenment for sustainable development; development of ecological network and preservation of natural ecosystems; ecological examination in field of ensuring ecological safety; mechanisms of economic regulation in field of environmental management, handling with waste; radiation safety.

For the purpose of harmful effect decrease and minimization of negative ecological consequences of economic activity of KR the draft Ecological code has included new mechanisms of economic regulation in field of stimulation of enterprises at introduction of nature protection, resource-saving and low-waste technologies.

Other innovation is that the draft code has included provisions on chemical and biological safety. Now regulatory legal base in the Kyrgyz Republic doesn't reflect necessary legal aspects of chemical and biological safety regulation. Now at the same time there are no branches and productions which wouldn't exert negative impact on the

environment. In the conditions of extreme limitation of resources and need in its rational use, questions of development of genetically engineered activity are very relevant today. Uncontrolled development of bioengineering activity can lead to threats to sustainable development of economy, maintaining health of population, an animal and flora, creation of guarantee of ensuring ecological safety of the country. In this regard, this innovation is relevant. The regulation of all offered norms and requirements forms the system of organizational and legal measures in field of ensuring ecological safety.

Provisions on right of citizens and public organizations on ecological information is provided also in details in draft code, procedure of access to information is simplified, the list of ways of access is expanded, protection of the right for access to ecological information is stated.

According to authors, adoption of this project will also allow to involve economic mechanisms stimulating economic entities to implementation of requirements of nature protection legislation. Special attention in the draft code is paid to ecological education, enlightenment and ecological and legal culture.

The competence of the Government of KR, authorized public authorities in sphere of environmental protection and ensuring control and supervision on ecological safety, competence of bodies of local government is provided in chapter 2 of the draft Ecological code, but it doesn't define power of the President and parliamentarians in sphere of conservation of nature, though in Zhogorku Kenesh of KR there is a special committee dealing with issues of conservation of nature and environmental management.

Certainly, adoption of the Ecological code is the step aimed at the development of ecological legislation, removal of duplication, discrepancies, raising of status of ecological requirements and standards to the level of normative acts of direct action, disposal of reference norms, on increase of law enforcement.

Environmental problems – complex problems, they have various nature and origin, concern all citizens, legal entities and the state in general. The experience of countries of the world accumulated in field of solution of environmental problems convincingly shows that they can't be solved by separate laws. At the same time, many problems of legal regulation of environmental protection can be best solved by codification of ecological legislation as legally complete and internally stipulated normative act which not only creates updated set of existing norms, but enters a number of new legal institutes.

The complexity of development of codified normative legal act of ecological and legal content is caused by complex nature of ecological law that,

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undoubtedly, has to be reflected in content of Ecological code [11, page 6].

Other important problem is that in Kyrgyzstan there is no Concept of ecological legislation development. Acceptance and development of full Ecological code is impossible in absence of its Concept providing reasonable idea, purposes, subject of legal regulation, place and value of the code in system of legislation, general characteristic and assessment of legal regulation condition of corresponding public relations with application of analysis of the laws existing in this sphere and other normative legal acts. Besides, gaps and contradictions, existence of obsolete rules of law which have actually become invalid, and also inefficient provisions which don't have due mechanism of realization, have to be specified. Theoretically, the concept also has to contain analysis of corresponding law-enforcement practice and also social and economic, political, legal and other consequences of implementation of future law.

Conclusion

Codification of ecological legislation is necessary, however, it has to take place on the basis

of continuity of lawmaking, taking into account problems of acting system of legal regulation. In them number of reference and charging norms have to be reduced, it is necessary to reduce a declarative part, to lower abstractness of text, to strengthen specification of legislative material, and the most important – the effective mechanism of its realization has to be provided, otherwise it will become next, well written "paper law". Codification has to "be about to happen", it has to be sensible and reasonable process as only possible and effective option of ecological legislation development.

We also believe that law-enforcement practice has to exert special impact on codification activity. As practice will help to reveal those norms most of which effectively solve problems in this sphere, and correspond to public requirements, and also norms invalid. Practice will direct reason of its unserviceability: whether it is a consequence of need absence, its redundancy, or lack of necessary mechanisms for their realization.

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