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Редакция бағанасы.....7

Мемлекет және құқық теориясы

А.И. БИРМАНОВА, Д.К. РУСТЕМБЕКОВА,
А.А. НУКУШЕВА Негізгі мәдени құқықтарды іске асыру
тетігі13

Конституциялық және әкімшілік құқық

Э.С. МАЙШЕКИНА, М.К. АБДРАХМАНОВ,
Е.В. ДУШЕЧКИНА Қазақстан Республикасында жергілікті
өзін-өзі басқарудың қалыптасуы мен дамуын құқықтық
талдау22

Б.О. АЛТЫНБАСОВ, А.Р. БАЯНБАЕВА (Бристоль,
Ұлыбритания) Академиялық ұтқырлықтың жергілікті
туризмнің дамуына ықпалы: саяси және құқықтық
аспектілері31

М.С. БИСАЛИЕВ, К.Н. ШАКИРОВ Заңды тұлғалардың
жеке деректері – киберкеңістікте құқықтық қорғаудың
арнайы объекті ретінде42

Азаматтық және азаматтық-процестік құқық

Д.Б. РАЗИЕВА, Е.М. АЙТҚАЗИН, М.А. АМИРОВА
Қазақстан Республикасында медицина қызметкерлерінің
кәсіби жауапкершілігін сақтандыру.....53

Э.Б. АБЛАЕВА, А.Р. ЕНСЕБАЕВА, А.Т. ИСМАГУЛОВА,
М.А. УТАНОВ, Қазақстанның өркениеті мен
сот өндірісінде істер мен дауларды реттеу (жетістіктер,
мәселелер, келешегі).....63

Д.Н. БЕКЕЖАНОВ, Ғ.Б. АХМЕТ, К.А. ДЖУМАБАЕВА
Климатты қорғау ұғымының теориялық және заңнамалық
аспектілері77

Қылмыстық құқық және қылмыстық процесс

М.М. КУЛБАЕВА, А.Н. АХПАНОВ Халықаралық
стандарттар, тергеу сатысында сот бақылауының шетелдік
заңнамалық тәжірибесі86

Б.М. ИМАШЕВ Маман мен сот сарапшысының
қызметінде қылмыстық сот ісін жүргізу қағидаттарын іске
асыру: проблемалар мен перспективалар. 2 бөлім.97

К.Ә. БӘКІШЕВ, А.Х. ФЕТҚҰЛОВ Жарылыс қаупі бар
объектілерде қауіпсіздік қағидаларын бұзу: Қазақстан
Республикасы Қылмыстық кодексінің 281-бабындағы жаңа
редакцияның ерекшеліктері108

Е.В. МИЦКАЯ Сыбайлас жемқорлыққа
қылмыстық-құқықтық құралдармен қарсы іс-қимыл.....117

Ә.М. СЕРАЛИЕВА, Н.С. ДОСЫБЕКОВ Жедел-іздігі
қызметі қызметкерлерін психологиялық даярлаудың негізгі
бағыттары128

Халықаралық құқық және салыстырмалы құқықтану

Р.Қ. СӘРПЕКОВ Мүгедек адамдардың құқықтарын қорғаудың халықаралық-құқықтық стандарттары: Қазақстанда және шет елдерде енгізудің кейбір аспектілері	137
Е.М. АБАЙДІЛДИНОВ, А.Н. ЕРҒАЛИМОВА Мүмкіндік шектеуі балалары бар жұмыскерлердің толық емес жұмыс күні туралы ХЕҰ-ның №175 Конвенциясы нормаларын Қазақстан заңнамасына имплементациялау	148
М.А. АХМАДИ, С. НАРТ (Измир, Түркия) ICSID Конвенциясына сәйкес инвестициялық дауларды төрелікте шешудің тәртібі (Инвестициялық дауларды шешудің халықаралық орталығы)	159
Д.Ө. БАЙТӨҚАЕВА, Ф. АХИЛЛЕС (Париж, Франция) Әуе және ғарыш кеңістігінің құқықтық режимін реттеу саласындағы халықаралық заң шығару тәжірибесі	168
Р.Р. ЧАХОР (Краков, Польша) Польша Республикасындағы ұлттық азшылықтардың мәртебесін құқықтық реттеу	176

Құқықтық мониторинг

С.И. КЛИМКИН, А.Ғ. ҚАЗБАЕВА Қазақстан Республикасындағы медиацияны құқықтық реттеу.....	183
В.Т. КОНУСОВА Конституциялық мониторинг ұлттық құқықтық жүйені жасампаз дамыту құралы ретінде.....	193
К.Е. ИСМАҒҰЛОВ, Н.Н. ТУРЕЦКИЙ Арнаулы мемлекеттік органдар туралы заңнаманы жетілдірудің кейбір мәселелері	204
Е.Н. КАЛИАКПЕРОВА, Ж.Е. САДЫҚАНОВА «Қазақстан Республикасының халықаралық шарттары туралы» заңның тиімділігін талдау	213

Мемлекеттік тілдегі заңшығармашылық практикасынан

А.А. МЕДИНАЕВА Қазақ тіліндегі кейбір терминдердің мәселелеріне орай.....	222
---	-----

Жас ғалым мінбері

Э.М. МҰРАТОВА Мүгедектерді әлеуметтік қамсыздандыруды құқықтық реттеудің кейбір аспектілері	228
А.Б. САТАЕВА Англия мен Қазақстанның азаматтық процесінде дәлелдемелерді ашудың кейбір теориялық және құқықтық аспектілері туралы	234
Э.С. КУАНДЫКОВА Қазақстан Республикасының агроөндірістік кешенін мемлекеттік басқару: құқықтық реттеудің мәселелері	243
М.К. РАКЫМБАЕВА Өзіне-өзі қол жұмсауға жеткізгені үшін қылмыстық жауаптылық туралы құқықтық нормаларды жетілдіру	253

«Жаршының» архивтегі беттері

Е.Т. БАЙМОЛДИНОВА PhD М.Х. Хасеновтің «О результатах анализа законодательства Республики Казахстан о государственных гарантиях равных возможностей мужчин и женщин» атты ғылыми жарияланымына қайта оралғанда	259
ЗҚАИ-ның ғылыми қызметі туралы ақпарат	264



ВЕСТНИК

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Колонка редакции	9
Теория государства и права	
А.И. БИРМАНОВА, Д.К. РУСТЕМБЕКОВА, А.А. НУКУШЕВА Механизм реализации основных культурных прав	13
Конституционное и административное право	
Э.С. МАЙШЕКИНА, М.К. АБДРАХМАНОВ, Е.В. ДУШЕЧКИНА Правовой анализ формирования и развития местного самоуправления в Республике Казахстан	22
Б.О. АЛТЫНБАСОВ, А.Р. БАЯНБАЕВА (Бристоль, Великобритания) Влияние академической мобильности на развитие местного туризма: политические и правовые аспекты.....	31
М.С. БИСАЛИЕВ, К.Н. ШАКИРОВ Персональные данные юридических лиц как возможный особый объект правовой охраны в киберпространстве	42
Гражданское и гражданско-процессуальное право	
Д.Б. РАЗИЕВА, Е.М. АЙТКАЗИН, М.А. АМИРОВА Страхование профессиональной ответственности медицинских работников в Республике Казахстан	53
Э.Б. АБЛАЕВА, А.Р. ЕНСЕБАЕВА, А.Т. ИСМАГУЛОВА, М.А. УТАНОВ Урегулирование дел и споров в цивилистике и судопроизводстве Казахстана (достижения, проблемы, перспективы)	63
Д.Н. БЕКЕЖАНОВ, Г.Б. АХМЕТ, К.А. ДЖУМАБАЕВА Теоретические и законодательные аспекты понятия охраны климата	77
Уголовное право и уголовный процесс	
М.М. КУЛБАЕВА, А.Н. АХПАНОВ Международные стандарты, зарубежный законодательный опыт судебного контроля в стадии расследования	86
Б.М. ИМАШЕВ Реализация принципов уголовного судопроизводства в деятельности специалиста и судебного эксперта: проблемы и перспективы. Часть 2.....	97
К.А. БАКИШЕВ, А.Х. ФЕТКУЛОВ Нарушение правил безопасности на взрывоопасных объектах: особенности новой редакции ст. 281 Уголовного кодекса Республики Казахстан	108
Е.В. МИЦКАЯ Противодействие коррупции уголовно- правовыми средствами	117
Э.М. СЕРАЛИЕВА, Н.С. ДОСЫБЕКОВ Основные направления психологической подготовки сотрудников оперативно-розыскной деятельности	128

Международное право и сравнительное правоведение

Р.К. САРПЕКОВ Международно-правовые стандарты защиты прав лиц с инвалидностью: некоторые аспекты внедрения в Казахстане и зарубежных странах	137
Е.М. АБАЙДЕЛЬДИНОВ, А.Н. ЕРГАЛИМОВА Имплементация норм Конвенции МОТ №175 о неполном рабочем времени для работников, имеющих детей с инвалидностью, в законодательство Казахстана	148
М.А. АХМАДИ, С. НАРТ (г. Измир, Турция) Арбитражная процедура решения инвестиционных споров в соответствии с конвенцией ICSID (Международный центр по разрешению инвестиционных споров)	159
Д.У. БАЙТУКАЕВА, Ф. АХИЛЛЕС (г. Париж, Франция) Международный законодательный опыт в сфере регулирования правового режима воздушного и космического пространства	168
Р.Р. ЧАХОП (г. Краков, Польша) Правовое регулирование статуса национальных меньшинств в Республике Польша	176

Правовой мониторинг

С.И. КЛИМКИН, А.Г. КАЗБАЕВА Правовое регулирование медиации в Республике Казахстан	183
В.Т. КОНУСОВА Конституционный мониторинг как инструмент созидательного развития национальной правовой системы.....	193
К.Е. ИСМАГУЛОВ, Н.Н. ТУРЕЦКИЙ Некоторые вопросы совершенствования законодательства о специальных государственных органах	204
Е.Н. КАЛИАКПЕРОВА, Ж.Е. САДЫКАНОВА Анализ эффективности закона «О международных договорах Республики Казахстан»	213

Из практики законотворчества на государственном языке

А.А. МЕДИНАЕВА К вопросам некоторых терминов на казахском языке	222
---	-----

Трибуна молодого ученого

Э.М. МУРАТОВА Некоторые аспекты правового регулирования социального обеспечения инвалидов	228
А.Б. САТАЕВА О некоторых теоретических и правовых аспектах раскрытия доказательств в гражданском процессе Англии и Казахстана	234
Э.С. КУАНДЫКОВА Государственное управление агропромышленным комплексом Республики Казахстан: проблемы правового регулирования	243
М.К. РАКЫМБАЕВА Совершенствование правовых норм об уголовной ответственности за доведение до самоубийства	253

Архивные страницы «Вестника»

Е.Т. БАЙМОЛДИНОВА Возвращаясь к научной публикации PhD М.Х. Хасенова «О результатах анализа законодательства Республики Казахстан о государственных гарантиях равных возможностей мужчин и женщин»	259
--	-----

Информация о научной деятельности ИЗПИ	267
--	-----



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Editorial 11

Theory of State and law

A.I. BIRMANOVA, D.K. RUSTEMBEKOVA, A.A. NUKUSHEVA Mechanism for the realization of basic cultural rights 13

Constitutional and Administrative Law

E.S. MAISHEKINA, M.K. ABDRAKHMANOV, E.V. DUSHECHKINA Legal analysis of the formation and development of local self-government in the Republic of Kazakhstan 22
B.O. ALTYNBASSOV, A.R. BAYANBAYEVA (Bristol, UK) Impact of academic mobility on the development of local tourism: political and legal aspects 31
M.S. BISSALIYEV, K.N. SHAKIROV Personal data of legal entities as a potential special object of legal protection in cyberspace 42

Civil and Civil Procedure Law

D.B. RAZIEVA, Y.M. AYTKAZIN, M.A. AMIROVA Professional liability insurance of medical workers in the Republic of Kazakhstan 53
E.B. ABLAEVA, A.R. ENSEBAYEVA, A.T. ISMAGULOVA, M.A. UTANOV Settlement of cases and disputes in civil law and proceedings in Kazakhstan (achievements, problems and prospects) 63
D.N. BEKEZHANOV, G.B. AKHMET, K.A. JUMABAYEVA Theoretical and legislative aspects of the concept of climate protection 77

Criminal law and Criminal procedure

M.M. KULBAEVA, A.N. AHPANOV International standards, foreign legislative experience of judicial control in the investigation stage 86
B.M. IMASHEV Implementation of the principles of criminal justice in the activities of a specialist and a forensic expert: problems and prospects. Part 2 97
7K.A. BAKISHEV, A. KH. FETKULOV Violation of safety rules at explosive objects: features of the new edition of art. 281 of the Criminal code of the Republic of Kazakhstan 108
E.V. MITSKAYA Countering corruption by criminal law means 117
A.M. SERALIYEVA, N.S. DOSSYBEKOV The main directions of psychological training of employees of the operational and investigative activities 128

International law and Comparative law

R.K. SARPEKOV International legal standards for the protection of the rights of persons with disabilities: some aspects of implementation in Kazakhstan and foreign countries	137
Y.M. ABAIDELDINOV, A.N. YERGALIMOVA Implementation of the norms of ILO convention no.175 on part-time work for workers with children with disabilities into the legislation of Kazakhstan	148
M.A. AKHMADI, S. NART (Izmir, Turkey) Arbitration procedure for resolving investment disputes in accordance with the ICSID convention (the International centre for settlement of investment disputes)	159
D.U. BAITUKAYEVA, PH. ACHILLEAS (Paris, France) International legislative experience in the sphere of regulation of airspace and outer space legal regime	168
R.R. CZACHOR (Poland, Krakow) The legal status of national minorities in the Republic of Poland	176

Legal monitoring

S.I. KLIMKIN, A.G. KAZBAYEVA Legal regulation of mediation in the Republic of Kazakhstan	183
V.T. KONUSOVA Constitutional monitoring as a tool for constructive development of the national legal system	193
K.E. ISMAGULOV, N.N. TURETSKIY Some issues of improving the legislation on special state bodies	204
E.N. KALIAKPEROVA, ZH.Y. SADYKANOVA Analysis of the effectiveness of the law «On international treaties of the Republic of Kazakhstan»	213

From the lawmaking practice in the official language

A.A. MEDINAYEVA To the questions of some terms in the kazakh language.....	222
--	-----

Young researchers' tribune

E.M. MURATOVA Some aspects of the legal regulation of social security for the disabled	228
A.B. SATAYEVA On some theoretical and legal aspects of disclosure of documents in civil proceedings in England and Kazakhstan	234
E.S. KUANDYKOVA State administration of the agro-industrial complex of the Republic of Kazakhstan: problems of legal regulation	243
M.K. RAKYMBAEVA Improvement of legal norms on criminal liability for incitement to suicide	253

The archive pages of the «Bulletin»

Y.T. BAIMOLDINOVA Returning to the scientific article by PhD M.KH. Khassenov «On the results of the analysis of legislation of the Republic of Kazakhstan on state guarantees of equal rights and equal opportunities of men and women».....	259
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Information about the scientific activities of ILLI RK.....	264
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THEORETICAL AND LEGISLATIVE ASPECTS OF THE CONCEPT OF CLIMATE PROTECTION

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Abstract. *This article discusses the theoretical problems of the concept of climate protection, the ecological state of climate protection. The main attention is paid to the analysis of the basics of defining the concept of climate protection as an object of relations in the field of legal environmental protection, as well as the study of its legal properties that determine the features of regulatory regulation of this sphere of public relations. Climate is a condition in which a legal analysis of weather (atmospheric) conditions of a long-term period characteristic of a particular region is carried out. In addition, it can be said that at present the word "climate", mainly from the category of natural science, has become part of the active lexicon of man, has become a widespread and widespread word, has acquired various meanings. For the main purposes of this article, it seems necessary to determine the completeness of the concept of "climate" in its primary, natural-scientific application, to study the established generally accepted concept of climate and how the concept of "climate" is used in legal science, what content it receives within the framework of legal regulation. Climate protection is the main branch of effective management of natural resources. Climate protection is the basis for combating air pollution. The air will contribute to the spread of other diseases on the health of society. The State Climate Cadastre is a legal analysis of a systematized data set based on meteorological information about air temperature, cloud cover, and the totality of atmospheric conditions.*

Keywords: *The concept of climate, climate protection, environment, ecology, environmental safety, legal regulation, environmental code.*

КЛИМАТТЫ ҚОРҒАУ ҰҒЫМЫНЫҢ ТЕОРИЯЛЫҚ ЖӘНЕ ЗАҢНАМАЛЫҚ АСПЕКТІЛЕРІ

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Аннотация. Бұл мақалада климатты қорғау ұғымының теориялық мәселелері, климатты қорғаудың экологиялық жағдайы қарастырылады. Қоршаған ортаны құқықтық қорғау саласындағы қатынастардың объектісі ретінде климатты қорғау ұғымын анықтау негіздерін талдауға, сондай-ақ оның құқықтық қасиеттерін зерттеуге, қоғамдық қатынастардың осы саласын нормативтік реттеудің ерекшеліктерін алдын-ала анықтауға баса назар аударылады. Климат-бұл белгілі бір аймаққа тән көпжылдық кезеңнің ауа-райына (атмосфералық) құқықтық талдау жүргізілетін жағдай. Сонымен қатар, қазіргі уақытта "климат" сөзі, негізінен жаратылыстану категориясынан, адамның белсенді лексиконының құрамына кірді, кең таралған және кең таралған сөзге айналды, әртүрлі мағыналарға ие болды деп айтуға болады. Осы мақаланың негізгі мақсаттары үшін бастапқы, жаратылыстану-ғылыми қолданыста "климат" ұғымының толықтығын анықтау, климатты қорғаудың құқықтық анықтамасына қалыптасқан жалпы қабылданған климат ұғымын және "климат" ұғымының заң ғылымында қалай қолданылатынын, оның құқықтық реттеу шеңберінде қандай мазмұн алатындығын зерттеу қажет болып көрінеді. Климатты қорғау – қоршаған ортаны және өзгеде табиғи ресурстарды тиімді басқарудың негізгі саласы. Климатты қорғау ауаның ластануымен күресудің негізі болып табылады. Климатты қорғау ұйымдарының қызметін, ауаның ластануы мен қоғам денсаулығына аурулардың таралуына мәселелері қарастырылды. Мемлекеттік Климаттық кадастр-ауа температурасы және бұлттылық, жауын шашындар, атмосфералық құбылыстар, желдің бағыты, желдің соғуы мен жылдамдығы, жауын-шашын мөлшері және белгілі бір аумақтарға тән және көп жылдық кезеңдегі метеорологиялық деректердің климаттық базасы негізінде қалыптасқан атмосфералық ауаның құрамы мен ауаның ластану жағдайларының жиынтығы туралы метеорологиялық ақпаратқа негізделген жүйелі деректер жиынтығына құқықтық талдау жүргізілді.

Түйінді сөздер: Климат ұғымы, климатты қорғау, қоршаған орта, экология, экологиялық қауіпсіздік, құқықтық реттеу, экологиялық кодекс.

ТЕОРЕТИЧЕСКИЕ И ЗАКОНОДАТЕЛЬНЫЕ АСПЕКТЫ ПОНЯТИЯ ОХРАНЫ КЛИМАТА

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Аннотация. В данной статье рассматриваются теоретические проблемы понятия охраны климата, экологическое состояние охраны климата. Основное внимание уделяется анализу основ определения понятия охраны климата как объекта отношений в области правовой охраны окружающей среды, а также изучению его правовых свойств, предопределяющих особенности нормативного регулирования данной сферы общественных отношений. Климат-это состояние, при котором проводится правовой анализ погодных (ат-

мосферных) условий многолетнего периода, характерных для конкретного региона. Кроме того, можно сказать, что в настоящее время слово "климат", в основном из категории естествознания, вошло в состав активного лексикона человека, стало распространенным и широко распространенным словом, приобрело различные значения. Для главных целей данной статьи представляется необходимым определить полностью понятия "климат" в первичном, естественно-научном применении, изучить сложившееся общепринятое понятие климата и то, как понятие "климат" используется в юридической науке, какое содержание оно получает в рамках правового регулирования. Защита климата – основная отрасль эффективного управления природными ресурсами. Защита климата является основой для борьбы с загрязнением воздуха. Воздух будет способствовать распространению других болезней на здоровье общества. Государственный климатический кадастр – проведен правовой анализ систематических наборов данных, основанных на метеорологической информации о совокупности атмосферных условий, включающих температуру воздуха, облачность, атмосферные явления, направление и скорость ветра, количество осадков и других характеристик атмосферы и подстилающего слоя, характерных для определенных территорий и сформированных на основе климатической базы метеорологических данных за многолетний период.

Ключевые слова: Понятие климата, охрана климата, окружающая среда, экология, экологическая безопасность, правовое регулирование, экологический кодекс.

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Introduction

The problems of environmental safety, climate protection in Kazakhstan are relevant today. Environmental safety for our country is important for the effective use of natural resources, protection of the environment from other life-threatening disasters in substances harmful to human health. Therefore, the protection of the natural system in our country, climate change, and environmental improvement are an important part of human life. Therefore, it is obvious that it is necessary to strengthen the work to combat climate crises in the country. The problems arising in climate protection are common to all States. It is necessary to take joint measures to combat climate disasters. The initial stage of work in this direction was associated with the adoption of measures to protect the ozone layer, and taking into account the tasks set in this area, it can largely be considered successful and completed. It seems that the next stage should be the adoption of comprehensive measures to protect the climate in general [1, p. 28].

The discussion on the protection of the ozone layer and climate arose not without reason. Its history can be traced back to the middle of the last century, and all the time it was accompanied by active research work in the field of studying the climate system, its variability, sensitivity, external and internal factors of influence [2, p.106]. Therefore, at

present, the need to take legal measures to protect the climate can no longer be perceived as a controversial issue or as a completely new area of environmental and legal policy that requires further scientific justification: legal protection of the climate is an objective reality of law. Of considerable importance in this context is the fact that the world community has openly and definitively recognized the need to take immediate measures to reduce the anthropogenic impact on the climate. In addition, the nature of political discussions and the scale of initiatives in the field of climate protection have undergone significant changes over a relatively short period: the quantity and quality of regulatory material on this topic has significantly increased, specific mechanisms and methods of legal regulation at the level of international and national law have been developed.

During the validity of the Kyoto Protocol and the application of the mechanisms provided for by it, certain conclusions were drawn about their effectiveness, critical comments and suggestions for improvement were formulated². Climate protection has been one of the most widely discussed issues in recent years. Here, the interests of developed and developing countries, enterprises engaged in the production of energy from traditional and renewable sources, entities engaged in massive [3, p.363] emissions of CO₂, other greenhouse

² Kyoto Protocol of May 9, 1992. Kyoto Protocol to the United Nations Framework Convention on Climate Change. [electronic resource]. — Access mode: <https://unfccc.int/resource/docs/convkp/kpeng.pdf>

gases and ozone-depleting substances into the earth's atmosphere collide with the interests of environmental protection and public health. This research is the subject of a broad discussion between politicians, environmentalists, various scientific schools, the public and industry representatives around the world [4, p.185].

Methods and materials used

Climate affects human health in many ways, including periods of extreme heat, storms and floods, disruption of food systems, as well as death and illness due to common weather events, such as foodborne diseases, water-borne diseases, vector-borne diseases. In addition, climate disrupts many social determinants of health, such as survival, equality, and access to health and social support structures. Although it is clear that climate affects human health, an accurate assessment of the extent and consequences of many climate-related health risks remains a challenge. In addition, scientific advances allow us to link the increase in morbidity and mortality with anthropogenic warming and to more accurately determine the risks and the scale of health risks. During the study of these possibilities, a legal analysis of the works of many domestic and foreign scientists was carried out. International and national legal acts on the concept of climate protection were applied, historical, legal comparative methods, methods of analysis were used.

Research results

The urgency of the problem of climate legal, economic, organizational measures aimed at regulating the anthropogenic impact on the climate is recognized internationally. The context of international legal regulation of relations in the field of climate change gives grounds to assert that the legal regulation of relevant relations [5, p.188], at the national level should be based on a combination of public legal, principles, methods and means for the purposes of regulating relations in the field of issuing permits for greenhouse gas emissions, their inventory, maintaining the state greenhouse gas cadastre, rationing, planning and control in the field of climate protection, and private, law – in order to regulate property relations within the framework of the turnover of carbon units as special property, rights to greenhouse gas emissions [6, p. 142], satisfaction of private property interest in reducing greenhouse gas

emissions of the subjects of relations.

An effective combination of these methods will allow to form a regime of natural stimulation, economic interest of economic entities in activities aimed at reducing the negative anthropogenic impact on the climate system, will contribute to the introduction of the principles of "green economy" in the Republic of Kazakhstan³.

The "green" economy focuses on meeting human needs, taking into account interaction with the environment, the welfare of future generations is a priority. In other words, a "green" economy is a system of economic activities related to the production, distribution, exchange and consumption of goods and services that lead to an increase in human well being in the long term; future generations are not exposed to significant environmental risks or environmental scarcity [4, p. 17].

In order to ensure environmental safety in the Republic of Kazakhstan, the legal regulation of climate protection is provided for by the following legal acts. In particular, the concept of a green economy adopted on May 30, 2013, the Environmental Code of January 2, 2021 and the national project "Green Kazakhstan" of October 12, 2021. We believe that there should be a special comprehensive law on climate protection. The Law on Climate Protection should be aimed at ensuring the protection of natural systems, climate change, vital interests of society and individual rights aimed at environmental safety in the country from threats arising from anthropogenic and natural impacts on the environment. We believe that employees of the Ministry of Ecology and Natural Resources in the field of climate protection, employees of Kazhydromet and representatives of a legal scientist and a deputy of the Maslikhat should be prepared for the preparation of the bill.

Legal and economic mechanisms and instruments for the national distribution of obligations to reduce emissions, the emergence, transfer and termination of rights to greenhouse gas emissions, including through transactions; the procedure for confirming the achieved reductions in greenhouse gas emissions in the implementation of specific projects and activities; the main requirements that are mandatory for compliance by entities, whose activities are related to, rationing in the field of climate, protection; the procedure, for

³ Указ Президента Республики Казахстан «О концепции по переходу Республики Казахстан к зеленой экономике» от 30 мая 2013 года № 577 // <https://adilet.zan.kz/rus/docs/T1300000577>

maintaining the state cadastre of anthropogenic greenhouse gas emissions, the national [7, p. 272] register of carbon units, monitoring greenhouse gas emissions, monitoring compliance with climate legislation and liability for offenses in the designated area of relations.

Discussion

In jurisprudence, in the field of environmental law, although much attention is paid to climate protection issues, today in the theory of Environmental Law, as well as in law enforcement practice, it can be observed that the legal nature of climate protection, as well as its climate protection, has not developed a single approach. The development of knowledge about the climate marked the beginning of separate studies of its patterns and internal nature. Tabera Scharrer scientists studied the circulation of the atmosphere and its relationship with the climate. In devoted a number of works to climate research. As a result of these studies, the basis was laid for the development of a new science at the junction of the spheres of geography, meteorology and geophysics - a separate branch of scientific knowledge, called climatology [8, p. 204]. Around the middle, the concept of climate, which previously referred only to the state of the atmosphere at the earth's surface, was extended to the high layers of the atmosphere. To date, within the framework of climatology, the following idea of climate has been formed: climate is a long-term weather regime peculiar to a particular area on earth and is one of its geographical characteristics [9, p. 155]. At the same time, a multi-year regime is understood as the totality of all weather conditions in a given area for a period of several decades, a typical annual change of these conditions and possible deviations from it in individual years, combinations of weather conditions characteristic of its various anomalies of drought, rainy periods, cold spells, etc. [10, p. 30].

Thus, the climate is the result of physical (climate-forming) processes occurring in the atmosphere and the underlying layer (the underlying layer means the top layer of soil, vegetation, top layer of water, snow cover, ice cover on the sea, lake, etc.), and depends on geographical factors that determine the course of these processes in natural conditions. Climate - forming processes include: 1) the incoming consumption of radiant energy on the earth's surface and in the atmosphere; 2) atmospheric circulation, that is, a system of air currents carrying different amounts of heat and

moisture; 3) vertical heat exchange and moisture exchange in the atmosphere, the underlying layer and between them [9, p. 104]. As the authors of the textbook on meteorology and climatology note, at present we can talk about two senses of the word "climate": Climate in the narrow sense of the word, or local climate, is understood as a set of atmospheric conditions over a long period peculiar to a particular place, depending on its geographical situation. In this understanding, climate is one of the physical and geographical characteristics of the area. Climate in a broad sense, or global climate, is a statistical set of states traversed by the atmosphere-ocean system over time periods of several decades. In this understanding, climate is a global concept [10, p. 71]. Weather is the state of the atmosphere in the place in question at a certain moment or for a limited period of time, and the long-term weather regime just forms the climate. It is obvious that the category "weather" captures fewer significant meteorological and geophysical indicators than the concept of "climate": here we are not talking about radiant energy and its impact on the earth or about geophysical processes in the upper atmosphere [9, p. 153]. However, it is long-term observations of the weather that make it possible to identify trends in climate formation, to find out the interaction between the hydrosphere, lithosphere and atmosphere. At the same time, in ordinary life, when talking about climate, we most often do not mean complex geophysical processes and their trends, but we mean the typical weather, regime of a certain area in combination with our visual and physical sensations and ideas about typical vegetation, typical fauna, winds, etc., and, as a consequence, with typical human living conditions and even the quality of life [10, p. 234].

Thus, in fact, we expand the concept of climate and include in it both the actual state of individual elements of the natural environment, the characteristics of the natural environment in their form, which is formed under the influence of climate in the meteorological sense, and certain social characteristics. In this case, we can talk about the established commonly used concept of climate. The concept of climate is associated with various phrases, composite concepts, which together represent a nest of concepts associated with the word climate. Among them are the climate-forming processes and factors already mentioned above, the climate system, types of climate, impact on climate, climate change, climate protection.

The concept of "climate system" is one of the central ones in this list for the purposes of this work, since climate itself is a product of the interaction of external astrophysical (solar radiation) and celestial-mechanical factors (the position of the Earth relative to the Sun, the orientation of the Earth's axis relative to the plane of its orbit) with the Earth's climate system. Understanding what the climate system is makes it possible to identify its essential elements, factors affecting them and the entire climate system, and subsequently determine what climate change is and what measures can be taken to reduce the negative anthropogenic impact on the climate. According to scientists-representatives of natural sciences, the climate system includes the atmosphere, hydrosphere, land, cryosphere, as well as biota [11, p. 196].

A.Kuderina clarifies this concept, including also biogeochemical cycles of some climatically active substances [12, p. 372].

In the KZ, environmental legislation does not provide for the definition of climate protection. The Environmental Code, adopted on January 2, 2021, gives the following definition of climate change. Climate change is understood as a statistically significant deviation of the average indicators of the climatic state or its variability over a ten-year or longer period, which is directly or indirectly related to human activity causing changes in the composition of the global atmosphere, and affects the natural climate fluctuations observed over relative periods of time⁴.

However, the difference between them is that the components of the environment as a whole do not have any outlines within the framework of the planetary model, while the climatic characteristic is characterized by the allocation of zones with certain distinctive features. In addition, the climate system is always perceived in dynamics, since it implies the interaction of its elements and as a result can have a variety of actual manifestations, giving specific features to local climates and determining their favorability (or undesirability) for life and activity.

The study of climate from the point of view of the conditions of human activity and the deepening of knowledge about climate has led to the emergence of related studies combining objects of scientific knowledge of different sciences. In the XX century, ideas about the microclimate - the climate of territories on a

planetary scale arose, as well as studies at a more private level appeared, as a result of which the concepts of mesoclimate and microclimate were introduced. A special area of research in the field of climatology is associated with the study of the relationship between climate and individual natural components or individual zones, as well as anthropogenic objects. So there were studies in the field of climatology of oceans, forests, cities and the corresponding concepts: "climate of the oceans", "climate of forests", "climate of cities". Currently, in addition, there are studies devoted, for example, to medical climatology, construction climatology, complex climatology, and, finally, environmental climatology.

In other words, we can talk about the characteristics of the climate, which are somehow studied and taken into account in application to medicine, construction, ecology, respectively, in order to use them for the benefit of man. Thus, speaking about the climate in general, not in a natural scientific understanding, first of all, they pay attention to its properties in relation to the quality of life and to the conditions of human activity: that is, it is not the climate itself that is important for a person, but the quality of the conditions surrounding him and their acceptability for life [13, p. 143].

Nevertheless, the natural-scientific, ecological concept of climate needs to be translated into the legal plane in order to understand the subject of legal regulation, as well as the correct use of environmental-relevant information and the development of adequate measures in the field of legal protection of climate. The establishment of the legal meaning of the concept of "climate" is also necessary to describe the subject of legal regulation, to further develop a system of permits and prohibitions, to correctly identify goods in need of protection, and to establish their protection capacity from the point of view of law and legal instruments. According to the Russian theory of state and law, legal regulation is the implementation by means of legal means (legal norms, legal relations, individual prescriptions, etc.) of effective, regulatory and organizational impact on public relations in order to streamline, protect, develop them in accordance with the requirements of the economic basis, the social needs of this social system⁵.

At the same time, it should be emphasized

⁴ Кодекс Республики Казахстан «Экологический кодекс» от 2 января 2021 года № 400-VI ЗРК// <https://adilet.zan.kz/rus/docs/K2100000400>

⁵ Kyoto Protocol of May 9, 1992. Kyoto Protocol to the United Nations Framework Convention on Climate Change. [electronic resource]. — Access mode: <https://unfccc.int/resource/docs/convkp/kpeng.pdf>

that the subject of legal regulation is public relations, or rather, public relations, the need for regulation of which is recognized and provided by the state. Climate as a set of certain geophysical indicators, obviously, cannot be the subject of legal regulation in this context, nor can the climate system be the subject of legal regulation. Of interest, however, is the clarification of the question of whether the climate can act as an object of a regulated legal relationship [14, p. 206].

In this context, climate cannot be a protected material good, but it can probably be considered as a kind of social good. In our opinion, however, when answering this question, the diversity of approaches to the concept of "climate" should also be taken into account. Recognizing the climate in its natural scientific understanding as a protected good, we are, in fact, saying that society and the state are interested in protecting certain physico-chemical bonds and processes between elements of the climate system, which can hardly be considered fair and necessary in the context of legal regulation. Another position, which proceeds from the fact that climate should be understood as a natural resource that is vital for the existence of mankind, its health and prosperity [15, p. 207], is more correlated with the recognition, of climate as a protected good, but still unilaterally interprets climate as an object of consumption or, at least, as an object of useful use, and besides, it presumes a certain static nature of the climate, the set of its parameters.

Climate is not a component of the natural environment, but it is a kind of connecting matter between the components of the environment that determines the processes taking place in the climate system and brings them into a state of some dynamics. At the same time, if we talk about the components of the natural environment as elements that together provide favorable conditions for the existence of life on earth [16, p. 168], of course, a favorable climate is extremely important for the existence of life on Earth. From this point of view, climate is a special property of the environment: it does not stand on a par with the components of the environment - the subsoil, atmosphere, hydrosphere - but is in close relationship with them, and together with them forms the conditions of life on Earth and ensures its continuity. It can be said that, despite the frequent use of the phrase "climate protection", it is the typical or even habitual properties of the climate for humans, its suitability for life and the property of maintaining appropriate

conditions on Earth that is, in fact, the good that man and society are interested in preserving.

This approach simultaneously expresses both the dynamism of the climate and the idea that there are objective and conditional factors that can influence the characteristics of the climate, including in such a way that certain properties of the climate can be lost or seriously changed, and that the impact on the climate can have a variety of consequences (including negative) for humanity or individual groups of people.

On the other hand, we should not lose sight of the fact that within the framework of the current discussion on the need for climate protection, a special place is occupied by groups of people whose positions and demands are related not so much to the need to preserve typical climatic conditions for specific regions, as to the threats associated with climate change (including in other regions) and the onset of such shifts in the climate system in a global context, which are expected to lead to irreversible changes in external environmental conditions (for example, to the disappearance of the territory of a number of island states due to sea level rise, and therefore destroy the flora and fauna located there, endanger the lives and health of people). Is it possible to assume that from this point of view, the protected good should not be the climate and not its specific properties, but, ultimately, the territorial interests of the respective states, the health and life of people, biodiversity, conservation of the animal and plant world? It should be noted that these protected goods are generally recognized and are subject to protection through legal instruments for a long time. The emergence of a new threat to these benefits associated with climate change, in our opinion, leads to the emergence of a new object of protection - climate. This issue demonstrates the existence of an extremely important connection between the interests of climate protection and the conditions of human existence and life on earth. Summing up this article, we should agree with the point of view that bringing climate issues to international discussion indicates a new stage in the development of environmental law. In addition, taking into account the above, it would be fair to consider that the climate is one of the new objects of environmental and legal regulation.

Conclusion

In conclusion, we consider it necessary to make the following changes to the current legislation. In our opinion, such a definition

of climate protection can be given. Climate protection is national and international legislative acts and protection of the nature of the weather regime in one region during weather changes. We believe that this definition should be included in regulatory legal acts in the field of climate protection. Because the current legislation does not provide for a clear definition. Since the definition is unknown, the mechanics of climate protection work are incorrect.

The recommendations on climate protection are aimed at improving the effectiveness of adaptation to climate change in various sectors of the economy and cover issues of political structure, legislation and institutionalization. Development and strengthening of adaptation measures and actions climate protection for mountainous and flat areas will be an additional factor in Sustainable Development for Kazakhstan if they are coordinated at the local, national and regional levels. To do this, we need to improve the activities of institutions in the field of climate protection in the country. In particular, on behalf of the climate change Department in Kazakhstan, ecology is a responsible body within the Ministry of Geology and Natural Resources, which should improve its activities in coordination with the following

departments on adaptation and climate risks:

Kazhydromet - monitoring and climate change forecasts;

Information and Analytical Center for Environmental Protection- according to the data of the state accounting of environmental pollution sites, the State Register of environmental users and sources of environmental pollution, the state cadastre of consumption of ozone-depleting substances, the State Register of emissions and transportation of pollutants;

Green development - development of an environmental protection strategy aimed at reducing the negative impact of products on the environment;

Coordination Center for climate change - favorable geographical location and improvement of routes for the passage of transcontinental routes through the territory of the region.

Also, in our opinion, it can be proposed to include three main areas of climate protection:

1) Improving the effectiveness of climate change policies and measures;

2) strengthening the scope of work to combat climate change on the ground;

3) organization of complex work and provision of opportunities for employees to prepare draft laws.

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