

ISSUES OF ECOCIDE DEFINITION IN THE REPUBLIC OF KAZAKHSTAN: COMPARATIVE ANALYSIS WITH THE LEGISLATION OF CENTRAL ASIAN COUNTRIES

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Abstract. Effective legal protection of the environment is one of the main priorities not only for the Republic of Kazakhstan, but also for the whole of Central Asia. The author of the article analyzes the main approaches to the definition of ecocide as one of the most serious offenses committed against the environment and being a threat to national security. At the moment, the issue of environmental security is more relevant than ever and is on the agenda of all countries in the region. It is also closely intertwined with the realization of the right to live in a favorable environment. Corresponding or similar norms exist in the legislation of all Central Asian countries, which makes it possible to conduct a comparative legal analysis to identify differences in the approach to the very definition of ecocide and its place in the criminal law of the countries of the region. The author reviewed the definitions and provisions of ecocide in the criminal codes of the Republic of Kazakhstan, the Kyrgyz Republic, the Republic of Tajikistan, the Republic of Turkmenistan, and the Republic of Uzbekistan. The results of the analysis indicate that the norm of ecocide in the Criminal Code of the Republic of Kazakhstan has a relatively similar structure to the corresponding criminal codes of the countries of the region, but differs in the different approaches to defining the elements of the crime. It is also worth noting similar norms in the legislation of the Republic of Uzbekistan. In conclusion, the author proposes an approach to the harmonization of relevant norms in the legislation of Central Asian countries to achieve a common understanding and formulate common approaches to the crime, which is a direct threat to the biosphere.

Keywords: ecocide, criminal law, national legislation, Central Asia, comparative analysis.

ҚАЗАҚСТАН РЕСПУБЛИКАСЫНДА ЭКОЦИДТІ АНЫҚТАУ МӘСЕЛЕЛЕРІ: ОРТАЛЫҚ АЗИЯ ЕЛДЕРІНІҢ ЗАҢНАМАСЫМЕН САЛЫСТЫРМАЛЫ ТАЛДАУ

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Аннотация. Қоршаған ортаны нәтижесіне бағытты құқықтық қорғау Қазақстан Республикасында ғана емес, сондай – ақ бүкіл Орталық Азияда басты басымдықтардың бірі болып табылады. Мақала авторы экологияға қарсы орын алуы мүмкін ең ауыр және ұлттық қауіпсіздікке қауіп төндіретін құқық бұзушылықтардың бірі ретінде танылатын экоцидті анықтаудың негізгі амалдарын талдайды. Қазіргі уақытта экологиялық қауіпсіздік аса өзектілігімен ерекшеленетін мәселелердің бірі ретінде өңірдегі барлық мемлекеттердің күн тәртібінде қарастырылады. Сонымен қатар, бұл өз кезегінде адамзаттың қолайлы қоршаған ортада өмір сүру құқығын қамтамасыз ету мәселесімен тығыз байланысты болып табылады. Тиісілі немесе мәні бойынша ұқсас нормалар Орталық Азияның барлық елдерінің заңнамаларында көрсетілуі экоцид және оның аймақ елдерінің қылмыстық құқық жүйелеріндегі қарастырылған түсініктеріндегі айырмашылықтарды анықтау мақсатында салыстырмалы-құқықтық талдау жүргізуге мүмкіндік береді. Мақала авторы Қазақстан Республикасының, Қырғыз Республикасының, Тәжікстан

Республикасының, Түрікменстан Республикасының және Өзбекстан Республикасының Қылмыстық кодекстеріндегі экоцидтің анықтамалары мен ережелерін қарастырады. Талдау нәтижелері Қазақстан Республикасының Қылмыстық кодексіндегі экоцид нормасы өңір елдерінің тиісті қылмыстық кодекстерімен салыстырмалы түрде ұқсас құрылымға ие, бірақ қылмыс құрамының элементтерін айқындаудың әртүрлі амалдарында ерекшеленетінін көрсетеді. Сондай-ақ, Өзбекстан Республикасының заңнамасындағы мәні жағынан ұқсас нормаларды атап өткен жөн. Қорытындылай келе, автор биосфераға тікелей қауіп төндіретін қылмысқа жалпы түсінік пен жалпы көзқарастарды қалыптастыру үшін Орталық Азия елдерінің заңнамаларында тиісті нормаларды үйлестіруді жүзеге асыру тәсілін ұсынады.

Түйін сөздер: экоцид, қылмыстық құқық, ұлттық заңнама, Орталық Азия, салыстырмалы талдау.

ВОПРОСЫ ОПРЕДЕЛЕНИЯ ЭКОЦИДА В РЕСПУБЛИКЕ КАЗАХСТАН: СРАВНИТЕЛЬНЫЙ АНАЛИЗ С ЗАКОНОДАТЕЛЬСТВОМ СТРАН ЦЕНТРАЛЬНОЙ АЗИИ

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Аннотация. Эффективная правовая защита окружающей среды является одним из главных приоритетов не только Республики Казахстан, но и всей Центральной Азии. Автор статьи анализируются основные подходы к определению экоцида как одного из самых тяжких правонарушений, совершаемых против экологии и являющихся угрозой национальной безопасности. В данный момент вопрос экологической безопасности является как никогда актуальным и стоит на повестке дня всех государств региона. Он также тесно переплетается с осуществлением права на жизнь в благоприятной окружающей среде. Соответствующие или схожие по значению нормы существуют в законодательствах всех стран Центральной Азии, что дает возможность провести сравнительно-правовой анализ для выявления разницы в подходе к самому определению экоцида, так и его места в уголовном праве стран региона. Автор статьи рассмотрел определения и положения экоцида в уголовных кодексах Республики Казахстан, Кыргызской Республики, Республики Таджикистан, Республики Туркменистан, и Республики Узбекистан. Результаты анализа указывают на то, что норма экоцида в Уголовном кодексе Республики Казахстан имеет относительно схожую структуру с соответствующими уголовными кодексами стран региона, но отличается в различных подходах к определению элементов состава преступления. Так же стоит отметить схожие по значению нормы в законодательстве Республики Узбекистан. В заключении автором предлагается подход к осуществлению гармонизации соответствующих норм в законодательствах стран Центральной Азии для достижения общего понимания и формулирования общих подходов к преступлению, которое является непосредственной угрозой биосфере.

Ключевые слова: экоцид, уголовное право, национальное законодательство, Центральная Азия, сравнительный анализ.

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Introduction

Central Asian region includes five states unified not only by historically intertwined social and cultural ties but their Romano-Germanic legal systems that share intrinsic similarities as being built on experience and

practice of legal scholars and practitioners of the Soviet period [1, p. 103].

Central Asian states have similar legislation systems, so they share similar legal approaches to the crime of ecocide. With exception of Uzbekistan these neighboring countries have

provisions on ecocide in their Criminal Codes. While Uzbekistan is still considering the implementation of ecocide, its Criminal Code has legal provisions in Article 196 and Article 198 that can be considered as norms that have the most approximate substitution to ecocide norm as they have several similar elements¹.

Central Asian countries implement ecocide provisions because of dire environmental cases that exist in this region. The recent scholar articles by Mirzabaev, A., Roman Vakulchuk, Anne Sophie Daloz, Indra Overland, Haakon Fossum Sagbakken & Karina Standal share similar conclusions that issues that we are facing today may be more dangerous and may be part of permanent regional climate change with irreversible transformations of environmental conditions [2, p. 24; 3, p. 11]. With desertification and decreasing biodiversity states need any relevant means, including enforcement of legal norms to at least to prevent growing of already existing environmental issues.

Methods and materials used

The history of the development of national legislations of Central Asian countries shows that the governments of these countries considered implementing relevant environmental legal norms and amending their national legislation in the sphere of environmental protection. For example, the notion that Kazakhstan considers environmental issues and the right of people to live in a clean environment is supported by the implementation of relevant provisions in the Constitution [4, p. 189]².

The direct comparison of the structure and definition of ecocide in Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan allows to analyze regional ability to deter and punish such violations of regional security. The legal analysis was done by considering works by national and international legal scholars with the application of comparative historical and legal methods of analysis.

Research results

One of the ways to prevent environmental crimes from occurring is adoption of more

effective environmental legislation. The implementation of international legal norms is a possible approach for accomplishing this goal. At this time, Kazakhstan requires amendments to its norms regarding the environment, one of which is ecocide. More than two decades have passed since ecocide was implemented in the Criminal Code of Kazakhstan.

Contemporary definition of ecocide in the Article 169 of the Criminal code of the Republic of Kazakhstan: the mass destruction of flora or fauna, poisoning of the atmosphere, land or water resources, as well as the commission of other acts that have caused or may cause an environmental disaster or environmental emergency³.

The current definitions of environmental disaster and environmental emergency are the part of the Article 404 of the second edition of the Ecological code of the Republic of Kazakhstan: 'An environmental disaster is an ecological situation that has arisen in a part of the territory where, as a result of human activity or natural processes, serious and permanent changes in the environment have occurred. These changes have caused a significant decline in human health, as well as the destruction of natural ecosystems and the deterioration of flora and fauna.'

'An environmental emergency is an ecological situation that has developed in a region or water area where, as a result of human activity or natural processes, persistent unfavorable changes in the environment threaten human life and health, natural ecosystems, and the genetic stock of plants and animals, have occurred'⁴.

This legal norm is the result of numerous enhancements of criminal legislation introduced by Parliament of Kazakhstan after long period of legal research including comparative legal analysis of criminal legislation of other states [5, p. 400].

Ecocide is not currently recognized as a legal concept in the legislation of the Republic of Uzbekistan. However, the Criminal code of Uzbekistan contains legal provisions in the Article 196 and the Article 198 that bear resemblance to the provisions of ecocide due to

¹ Criminal Code of the Republic of Uzbekistan of September 22, 1994 — [Electronic resource]. — Access mode: <https://lex.uz/docs/111457>

² Constitution of the Republic of Kazakhstan. Adopted on August 30, 1995 at the republican referendum. — [Electronic resource]. — Access mode: <https://adilet.zan.kz/kaz/docs/K950001000>

³ Criminal Code of the Republic of Kazakhstan dated July 3, 2014 No. 226-V — [Electronic resource]. — Access mode: <http://law.gov.kz/client/#!/doc/81097/kaz>.

⁴ Environmental Code of the Republic of Kazakhstan dated January 2, 2021 No. 400-VI (with amendments and additions as of May 1, 2023) <http://law.gov.kz/client/#!/doc/151312/kaz>.

the presence of several similar core elements.

The Article 196 defines environmental pollution as ‘contamination or damage of land, water, or atmospheric air, resulted in mass disease incidence of people, death of animals, birds, or fish, or other grave consequences.’

The Article 198 lists several acts of damage or destruction of crops, forest, or other plants, and different legal consequences for them⁵.

While crops, forest, or other plants can be representative of whole flora, the Article 198 only recognizes such illegal acts against flora as arson, felling, and intentional damage. The Article 198 does not recognize the contamination of flora because of unintentional actions or negligence of responsible person.

The Article 196 and the Article 198 can be considered more or less substitution of ecocide norm. However, the implementation of ecocide norm that will consider all forms of damage, in all form of intention, to all objects of environment is required.

The Kyrgyz Republic has legal norm of ecocide in its Criminal Code of 2021 under Article 409, which states the following: ‘Massive destruction of flora and fauna, contamination of the atmosphere or water resources, and also commission of other actions capable of causing an ecological catastrophe’⁶.

According to commentary on Criminal Code of Kyrgyz Republic, the flora or fauna forms a combination of living organisms of plant origin - grass, shrubs, forests, plantations and animal origin - animals, birds, fish, insects, etc. [6].

The definition of ecocide in Criminal Code of Kyrgyz Republic is characterized by application of term ‘ecological catastrophe’ which does not have definition of criminal legislation of Kyrgyz Republic [7, p. 55].

The legislation of Tajikistan has legal norm on ecocide in the Article 400. ‘Mass destruction of flora and fauna, poisoning the atmosphere or water resources, as well as committing of other actions which may cause ecological catastrophe’⁷.

The definitions of the elements of ecocide similar to same elements of ecocide in other legislations of Central Asian countries. Current definition represents steady evolution

of environmental legislation of Tajikistan on the basis of implementation of ideas of legal scholars of Tajikistan [8].

The legal system of Turkmenistan has definition of ecocide in the Article 175 of Criminal Code of Turkmenistan. ‘Ecocide, that is, the mass destruction of flora or fauna, contamination of the atmosphere, land or water resources, as well as the committing of other actions that have caused or may cause an environmental catastrophe or environmental emergency, shall be punishable by imprisonment for a term of three to eight years’⁸.

The legal norm of ecocide was implemented in Criminal Code of Turkmenistan in November 21, 2015. Since then, no amendment was made to change the definition or legal consequences. Its modern and similar to definitions adopted by neighbouring countries. After all, Turkmenistan has policy to adapt its legislation in accordance with norms of international environmental law [9, p. 224].

Discussion

The comparative legal and socio-legal analysis of the norm of ecocide and its effectiveness require the analysis of its editions and amendments that have existed in all Central Asian countries.

The legal comparison of range of definitions norm of ecocide in the regional legislations highlight overall conciseness and laconic definition of ecocide in Kazakhstan. It is possible to apply this norm for almost any case related to extensive damage to the environment. Also, the existence of two different articles with different legal consequences for different ecocide related acts in Uzbekistan may be considered as advantage to have flexible choice of punishment.

The legal comparison of definition of ecocide norm of Kyrgyz Republic against ecocide norm of Kazakhstan shows that Kyrgyz Republic beside the lack of soil protection in ecocide norm, also lack official definitions to the core elements of ecocide.

From the other point of view, the ecocide established by Criminal code of Kazakhstan can

⁵ Criminal Code of the Republic of Uzbekistan of September 22, 1994 — [Electronic resource]. — Access mode: <https://lex.uz/docs/111457>.

⁶ Criminal Code of the Kyrgyz Republic dated October 28, 2021 No. 127 — [Electronic resource]. — Access mode: <http://cbd.minjust.gov.kg/act/view/ru-ru/112309>.

⁷ Criminal Code of the Republic of Tajikistan dated May 21, 1998 No. 574 — [Electronic resource]. — Access mode: <http://ncz.tj/content/criminal-code-of-the-republic-tajikistan>.

⁸ Criminal Code of Turkmenistan dated June 12, 1997 No. 222-I — [Electronic resource]. — Access mode: <https://minjust.gov.tm/ru/hukuk/merkezi/hukuk/204>.

be easily affected by changing norms related to its core elements. However, it is still hypothesised as neither Kazakhstan nor Kyrgyz Republic has no court practices in relation to ecocide.

The definitions of ecocide established in Criminal Codes of Tajikistan and Turkmenistan are similar to relevant norm of the Republic of Kazakhstan.

The comparison shows that single legal norm can have all cases of ecocide and be more convenient for understanding.

Conclusion

All countries of the Central Asian region have legal norms addressing the crime of ecocide to some extent. There are different approaches to formulating ecocide or ecocide-related crime. However, overall, the countries share agreement on the importance of criminalizing actions that could lead to the destruction of the environment necessary for the healthy and safe inhabitation of the region.

While differences in approaching ecocide issues are unique and represent local specifics, it is necessary to highlight that as ecocide threatens regional security, it would be more effective to deter such crime by harmonizing legal norms dedicated to this crime in the legislation of Central Asian countries.

Also, it is better to take into the account definition proposed by the Independent Expert

Panel for the Legal Definition of Ecocide. The suggested definition by the Panel is formulated as one single legal norm without separated legal terminology of the Rome Statute [10, p. 192]. In contrast, the definition of ecocide in the Criminal code of the Republic of Kazakhstan is depended on legal terminology that scattered across several legal acts. For example, definition of ‘environmental disaster’, and ‘environmental emergency’ is the part of the Environmental code of the Republic of Kazakhstan. While it is convenient to have clearly defined terminology, there is the risk that Article 404 of the Environmental code may be changed in the future without taking into the account of the Article 169 of the Criminal code, which might render the norm of ecocide ineffective.

It would seem that the proposed concept of ecocide by the Panel would make the definition of ecocide more convenient for implementation than the definition of ecocide that is now included in the Criminal Codes of Central Asian countries. It should be mentioned that the Panel suggest new definition to all countries in the world, not only members of Rome Statute.

Such an amendment will allow Kazakhstan and our regional partners to achieve a shared understanding and formulate common approaches to ecocide, which is a direct threat to regional security and the global biosphere.

ЛИТЕРАТУРА

1. Newton, S. *The constitutional systems of the independent Central Asian states: A contextual analysis*. — Hart Publishing, 2017. — 368 p.
2. Mirzabaev, A. *Climate Change Science and Policy in Central Asia: Current Situation and Future Perspectives // Climate Change in Central Asia. SpringerBriefs in Climate Studies*. — 2023. — pp. 23-32.
3. Roman Vakulchuk, Anne Sophie Daloz, Indra Overland, Haakon Fossum Sagbakken & Karina Standal. *A void in Central Asia research: climate change // Central Asian Survey*. — 2023. — pp. 1-20.
4. Жақсыбекова Ф.С. Экологиялық қылмыстылыққа қарсы күрес жүргізудегі қылмыстық саясат // Қазақстан Республикасының Заңнама және құқықтық ақпарат институтының Жаршысы» ғылыми-құқықтық журналы. — 2021. — 1(64). — Б. 184-190.
5. Каражанов М.Д., Жампеисов Д.А. Қазақстан Республикасының жаңа Қылмыстық кодексі контекстінде экологиялық қауіпсіздікке қол сұғатын қылмыстық құқық бұзушылықтардың объективтік жақтарының белгілерін доктриналды талдау // ҚазҰУ Хабаршысы. Құқық сериясы. — 2015. — 1(73). — Б. 396-405.
6. Осмоналиев К.М., Супатаева Ж.Э. Научно-практический комментарий к Уголовному кодексу Кыргызской Республики. — Бишкек: ЮрИнфо, 2012. — 680 с.
7. Айдарбеков Ч.А. Экоцид в уголовном законодательстве Кыргызской Республики // Управленческое консультирование. — 2016. — 3(87). — С. 52-59.
8. Кодирзода М.А. Некоторые проблемы экологической функции государства // Вестник ТГУПБП. — 2021. — 4(89). — С. 114-121.

9. Кепбанов Ё.А., Балыев Б.Б. Организация управления природоохранной деятельностью в Туркменистане (экологическая политика, национальная и международная правовая база, институциональный механизм). Отв. ред. академик, профессор Н.Р. Корпеев и канд. биол. наук М.Х. Дуриков. — Ашхабад, 2018. — 326 с.

10. Tulibayev S.T. Ecocide in international law: draft definition for the Rome Statute // *Bulletin of L.N. Gumilyov Eurasian National University. Law Series.* — 2023. — 2(143). — 191-198.

REFERENCES

1. Newton, S. *The constitutional systems of the independent Central Asian states: A contextual analysis.* — Hart Publishing, 2017. — 368 p.

2. Mirzabaev, A. *Climate Change Science and Policy in Central Asia: Current Situation and Future Perspectives* // *Climate Change in Central Asia. SpringerBriefs in Climate Studies.* — 2023. — pp. 23-32.

3. Roman Vakulchuk, Anne Sophie Daloz, Indra Overland, Haakon Fossum Sagbakken & Karina Standal. *A void in Central Asia research: climate change* // *Central Asian Survey.* — 2023. — pp. 1-20.

4. Jaqsybekova F.S. *Ekologialyq qylmystylyqqa qapsy küpes жүргізудегі qylmystyq saiasat* // *Qazaqstan Respublikasynyñ Zańnama jáne qūqyqtyq aqparat institutyńyñ Jarǵysy» ğylymi-qūqyqtyq jurnaly.* — 1(64). — 2021. — B. 184-190.

5. Karajanov M.D., Jampeisov D.A. *Qazaqstan Respublikasynyñ jańa Qylmystyq kodeksi kontekstinde ekologialyq qauipsızdıkke qol sūǵatyn qylmystyq qūqyq būzuşylyqtardyñ obektivtik jaqtarynyñ belgilerin doktrinaldy taldaı* // *QazǵUU Habarşysy. Qūqyq seriasy.* — 2015. — 1(73). — B. 396-405.

6. Osmonaliev K.M., Supataeva Zh.Je. *Nauchno-prakticheskij kommentarij k Ugolovnomu kodeksu Kyrgyzskoj Respubliki.* — Bishkek: JurInfo, 2012. — 680 s.

7. Ajdarbekov Ch.A. *Jekocid v ugolovnom zakonodatel'stve Kyrgyzskoj Respubliki* // *Upravlencheskoe konsul'tirovanie.* — 2016. — 3(87). — S. 52-59.

8. Kodirzoda M.A. *Nekotorye problemy jekologicheskoy funkicii gosudarstva* // *Vestnik TGUPBP.* — 2021. — 4(89). — S. 114-121.

9. Kepbanov Jo.A., Ballyev B.B. *Organizacija upravljenija prirodoohrannoj dejatel'nost'ju v Turkmenistane (jekologicheskaja politika, nacional'naja i mezhdunarodnaja pravovaja baza, institucional'nyj mehanizm).* Otв. red. akademik, professor N.R. Korpeev i kand. biol. nauk M.H. Durikov. — Ashhabad, 2018. — 326 s.

10. Tulibayev S.T. Ecocide in international law: draft definition for the Rome Statute // *Bulletin of L.N. Gumilyov Eurasian National University. Law Series.* — 2023. — 2(143). — 191-198.