The Legal Mechanism of Economic Regulation of Environmental Protection and Natural Resources Management: The Concept Notion, the Legal Support System

Samat Zhumagaliyevich Smoilov, Anar Abaikhankyzy Mukasheva and Marat Kadyrovich Syrlybayev

L. N. Gumilyov Eurasian National University, Kazakhstan; smoilovs@mail.ru

Abstract

The article is devoted to the comprehensive research of theoretical and applied problems relating to the legal mechanism of economic regulation of environmental protection and natural resources management, the study of the concept of a legal mechanism of economic regulation of environmental protection and natural resources management and the legal support system of this regulation. This paper investigates the theoretical and methodological ideas of the key concept interpretations in the context of transition to a green economy in the Republic of Kazakhstan. The paper reveals the key concepts, categories, principles and the system of the legal mechanism of economic regulation of environmental protection and natural resources management and represents the genesis of the development and the main trends concerning the concept under consideration. A legal analysis of the current legislation in the part regulating the concept of the legal framework of economic regulation of environmental protection and natural resources management is made; the legal problems of improving efficiency of their legal support are examined. Following the results of the research, the basic theoretical provisions and recommendations for improving the current legislation of the Republic of Kazakhstan and its implementation were stated.

Keywords: Anthropogenic Factors, Economic Regulation, Environmental Legislation, Environmental Mechanisms, Environmental Monitoring, Environmental Safety, Green Economy, Natural Resources, Pollution Penalties

1. Introduction

1.1 The Significance of the Issue Research

The present period of social and economic development of the Republic of Kazakhstan is characterized as a period of transition to a 'green' economy which can be defined as a successful one with a high standard of living, careful and rational use of natural resources for the benefit of future generations.

In such circumstances, an important role is played by methods of economic regulation of environment protection and natural resources management.

However, a mechanism of economic regulation of environmental protection and natural resources management worked out by now is not an integrated system; it consists of separate and not always interrelated elements.

For the high performance of this mechanism it is necessary to investigate the main reasons for its inefficiency, to develop guidelines for proposals to create an optimal system of legal support for all its elements.

As can be seen from the research, the problems of legal provision of the economic regulation mechanism in terms of environmental protection and natural resources
management in the Republic of Kazakhstan are relevant and require close attention from science, which should theoretically interpret the role of the state and law in the formation of a conceptually new model of environmental policy (to ensure the transition of the Republic of Kazakhstan to the green economy), and to offer legal tools for its effective implementation under these conditions.

The transition of the state to a green economy requires a substantiation of emerging priorities, the revision of the conceptual principles, goals and objectives of ecological and legal science.

1.2 The Connection of this Work with Other Research Projects

This theme is at the junction of economic and legal sciences, so a series of fundamental research was carried out by scientists dealing with economic issues.

Thesis researches are presented by legal scholars investigating the legal aspects of certain structural elements of the mechanism of economic regulation of environmental protection and natural resources management, in particular, financial regulation of environmental protection: Improving the Efficiency of Financial and Legal Mechanism to Regulate Environmental Protection, Legal Support in the Financing of Environmental Protection, Legal Regulation of Funding for Environmental Protection Programs. A series of studies was dedicated to the environmental insurance: Environmental Insurance: Theory, Regulatory Law Practice, Problems of Legal Regulation of Environmental Insurance in the Russian Federation.

Actually the mechanism of economic regulation of environmental protection and natural resources management was investigated only in one comprehensive monographic study Problems of Legal Support of Environmental Protection Economic Mechanism.

In Kazakhstan the issue was given little attention, as well. The Kazakh scientists examined only restricted aspects of this problem relating to natural resource payments, environmental insurance, and financial control over spending of funds allocated for environmental protection. Thus, in particular, among them are PhD theses: Legal regulation of Ecological Insurance in the Republic of Kazakhstan by G.M. Tlebayeva, Legal Regulation of Environmental Charges in the Republic of Kazakhstan by A.D. Rakhmetulin.

However, in our opinion, some issues of fundamental interest are beyond the research. They include: the definition development of ‘economic regulation mechanism for the protection of the environment and natural resources management’; the establishment of basic structural elements of the mechanism specified; identification of problems of this mechanism performance inefficiencies.

1.3 The Hypotheses and Research Goals

The research is aimed at comprehensive studying the legal problems concerning interpretation of the essence of the legal support mechanism for economic regulation of environmental protection and natural resources management, the system of legal support of economic regulation of environmental protection and natural resources management through the analysis of the corresponding regulations and the state's law enforcement activities in the ecological function implementation sphere and the interaction of state bodies with specially authorized bodies in the environmental protection field.

In this connection, the following objectives were set out:

- to explore the history of the formation and development of the legal mechanism for economic regulation of environmental protection and natural resources management in the Republic of Kazakhstan;
- to carry out a legal analysis of the nature of a legal framework for economic governance of environmental protection and natural resources management in the Republic of Kazakhstan;
- to determine the place of a legal mechanism for economic regulation of environmental protection and natural resources management in the Republic of Kazakhstan within the system of environmental law;
- to identify the problems of improving the legal framework for economic governance of environmental protection and natural resources management in the Republic of Kazakhstan;
- to analyze the legal sources of the legal mechanism for economic regulation of environmental protection and natural resources management in the Republic of Kazakhstan;

1.4 The Correlation of the Hypothesis with Research Results

This problem requires a rather deep and thorough legal analysis that necessitates creating theoretical guidelines
and elaborating proposals and recommendations for the development of the most accurate definition of the legal nature of the mechanism for economic regulation of environmental protection and natural resources management in the Republic of Kazakhstan.

There is uncertainty as for the legal interpretation of the concept of the mechanism of economic regulation of environmental protection and natural resources management in the Republic of Kazakhstan in the regulatory legal acts, contradiction to each other, and their inconsistency with the provisions of the Constitution of the Republic of Kazakhstan. Most provisions use a different understanding of the mechanism of economic governance of environmental protection and natural resources management in the Republic of Kazakhstan that is a reflection of private lobbying interests of certain population groups; not all legal acts are socially oriented to the protection of environmental rights and lawful interests of individuals and legal entities.

The existing mechanism of economic regulation of environmental protection and natural resources management worked out by now is not an integrated system; it consists of separate and not always interrelated elements.

For the successful performance of this mechanism it is required to provide a more accurate concept definition for the mechanism of economic regulation of environmental protection and natural resources management in the Republic of Kazakhstan.

1.5 Theoretical and Practical Findings of the Study

- ‘a mechanism for economic regulation of environmental protection and natural resources management’ is defined as a combination of factors providing economic incentives for natural resource users in order to comply with their natural resources management, resource replacement and protection of the environment;
- ‘a mechanism for financial regulation of environmental protection’ is defined as a set of financial regulators used by the parties concerned (the government, non-governmental associations, enterprises, etc.) to appeal to natural resource users to ensure compliance with environmental management by the latter, reproduction implementation and environment protection;
- ‘financial regulation of environmental protection and natural resources management’ is the impact of the parties concerned (the state, non-governmental organizations, enterprises, etc.) on natural resource users through the application of financial controls in order to ensure compliance with the environmental management by natural resource users, reproduction implementation and environment protection;
- ‘economic regulation of environmental protection’ is the impact of the parties concerned (the state, non-governmental organizations, companies, etc.) on natural resource users through the application of economic incentives to comply with the environmental management, reproduction implementation and environment protection by natural resource users;
- ‘financing environment protection’ is the allocation of funds to carry out environmental activities.

- The concept of ‘economic regulation mechanism for the environment protection and natural resources management’ is general in relation to the concept of ‘financial mechanism to regulate environmental protection’, since the former represents a set of economic incentives for natural resource users aimed at their compliance with the environmental management, restoration of natural resources and environmental protection.

- Accordingly, the ‘financial regulation of environmental protection’ is a constituent part of the concept of ‘economic regulation of environmental protection and natural resources management’.

If one compares the concept of ‘financial regulation of environmental protection’ and ‘the financing of environmental protection’, then the first concept is broader, since it includes the withdrawal of part of natural resource users’ profits in the form of pollution charges, penalties, etc., in addition to environmental financing, i.e., allocation of financial (cash) flows.

- At the present stage of development of environmental law and environmental legislation of the Republic of Kazakhstan the economic regulation standards of environmental protection and natural resources management constitute independent legal institution, which may be called ‘Mechanism for economic regulation of environmental protection and natural resources management’. This legal institution is definitely included in the General Environmental Law that follows from its relevance to the main institutions of the Special Part of Environmental Law.
- The structure of the mechanism of economic regulation of environmental protection and natural re-
sources management include such constituents as: 1) entities that provide economic incentives for natural resource users; 2) the system of legal norms that support the activities of these entities; 3) the regulatory process of natural resource users’ behavior by these entities.

2. Methods

Scientific principles and research methods are applied which are based on the requirements of an objective and comprehensive analysis of social development processes and phenomena and the functioning of the system of financing the costs for the environment protection and its legal bases. The following methods are used in the work: a systematic approach; structural and functional method; historical and legal method; logical method; the method of statistical research; comparative legal analysis; forecasting.

To study the problems of implementation of economic mechanisms for environmental protection the method of functional approach was used. In particular, used two groups of methods were applied – positive and negative motivation techniques.

Positive motivation techniques are measure that can provoke interest in natural resource users, incentives of natural resource users, carrying out a policy of preserving the natural environment. These include funding for environmental protection, exemption from payments to the budget, preferential loans, bonuses based on the results of environmental activities, leaving at the disposal of companies and transferring a part of the profit from the sale of products made from waste products to economic incentive funds.

From all the above-mentioned only funding for environmental protection and economic incentives for environmental protection protection are listed in the Environmental Code of the Republic of Kazakhstan. At this the positive techniques will include funding for environmental protection activities, not taken out from natural resource users’ own equity, but economic incentives for environmental protection will be considered a positive technique in case it provides property and other benefits for natural resource users.

Negative motivation techniques are techniques aimed at regulating the natural resource users’ behavior in the interests of environmental protection and rational natural management by depriving of property benefits. These include fees for emissions into the environment; fees for the use of certain types of natural resources; penalties, damages.

They used an observation method, in particular, in the study of the state of enterprises’ ecological security. Thus, the analysis of the volume of gross output of agriculture, forestry and fisheries in Kazakhstan in 2011 revealed that it was 5% of GDP, of mining industry industrial production – 18.2%; and in 2012 the volume of gross output of agriculture, forestry and fisheries in Kazakhstan amounted to 4.3% of GDP, mining industry industrial production – 17.5%; in 2013 the volume of gross output of agriculture, forestry and fisheries in Kazakhstan amounted to 4.5% of GDP, mining industry industrial production – 16.5%.

A statistical method was used in the analysis of information on the environmental situation, the financing of environmental protection (emissions, pollution, cost of environmental protection). For example, when analyzing the costs of environmental protection in the Republic of Kazakhstan the information about that in 2011 the cost of environmental protection of enterprises and organizations totaled 185.6 billion tenge was presented.

In the structure of expenses the protection of air and climate accounts for 28.8%, the management of waste treatment comprises 25.9%, the protection of water sources from pollution from sewage – 22.5%, the protection and restoration of soil, groundwater and surface water sources – 17.9%.

The method of comparative law was used as well. For example the costs of environmental protection are as follows: 0.67% in 2011, 0.64% in 2012; 0.64% of GDP in 2013!

3. Results

The research of the problem of ‘economic regulation mechanism of environment protection and natural resources management’ concept definition allows obtaining the following results:

1. We consider it relevant to reflect the definition of the mechanism of economic regulation of the environment protection and natural resources management in the Environmental Code of the Republic of Kazakhstan of January 9, 2007:

1. ‘A mechanism for economic regulation of environmental protection and natural resources
management’ is a combination of factors providing economic incentives for natural resource users in order to comply with their natural resources management, resource replacement and protection of the environment.

2. It is also proposed bring into use the following conceptual category:
   - 'economic regulation of environmental protection' is the impact of the parties concerned (the state, non-governmental organizations, companies, etc.) on natural resource users through the application of economic incentives to comply with the environmental management, reproduction implementation and environment protection by natural resource users;

3. Methods of economic incentives should be understood as measures and ways of the impact having at its core the distribution and redistribution of wealth and interests.

   In our opinion, the methods of economic incentives may include two groups of techniques –positive and negative motivation techniques.

   Positive motivation techniques are measures that can provoke interest in natural resource users carrying out a policy of the natural environment preservation.

   Methods Negative motivation techniques include methods aimed at regulating the natural resource users’ behavior in the interests of environmental protection and rational natural management by depriving of property benefits.

4. The analysis of the Republic of Kazakhstan legislation has allowed us to conclude that mainly negative motivation techniques are represented among methods of economic regulation which are adequately reflected in the legislation. As regards positive motivation techniques, they are practically not reflected in the Environmental Code of the Republic of Kazakhstan. Therefore, our proposal is to complement environmental, banking and tax legislation of the Republic of Kazakhstan with the rules on the economic regulation methods based on positive motivation.

   At the present stage of development of environmental law and environmental legislation of the Republic of Kazakhstan economic regulation standards of environmental protection and natural resources management constitute independent legal institution, which may be called ‘Economic regulation mechanism of environmental protection and natural resources management’.

   This legal institution is definitely included into the General Environmental Law that stems from its relevance to the main institutions of the Special Part of Environmental Law.

   In matter of a legal mechanism for economic regulation of environmental protection and natural resources management, the following results can be obtained:

   1. The contents of the mechanism of economic regulation of environmental protection and natural resources management constitute those means and methods that are used by entities that provide economic incentives for natural resources users which have basically the distribution and redistribution of wealth and interests.

   2. In a market economy and the transition of Kazakhstan to ‘green economy’ the list of economic methods should be as follows:
      - Budget funding for environmental protection (subsidies, grants, subventions);
      - Payments for emissions into the environment;
      - Payments for the use of certain types of natural resources;
      - Economic benefits;
      - Trading in quota emission into the environment;
      - Emissions trading and absorption of greenhouse gases;
      - Environmental insurance;
      - Customs duties;
      - The use of funds of state enterprises and organizations;
      - The use of funds of private enterprises and organizations;
      - The use of off-budget funds;
      - Support for the environmental business;
      - Economic sanctions.

   We believe that there is a need to consolidate this list in a separate article of the Environmental Code of the Republic of Kazakhstan.

   3. Ecological insurance as a system of relationships can be summarized in a certain way: it is a set of relationships of protecting the legitimate interests (both property and non-property) of natural or legal persons, territorial-administrative units, the state upon occurrence of insured event (damage to the environment, life, health or property of other persons) defined by insurance contracts through insurance payments made by the insurance company through its assets.

   Ecological insurance as a legal institution is a set of legal rules governing the relations of protection of
The Legal Mechanism of Economic Regulation of Environmental Protection and Natural Resources Management: The Concept
Notion, the Legal Support System

legitimate interests (such as property and non-property) of natural or legal persons, administrative-territorial units, the state upon occurrence of insured event (damage to the environment, life, health or property of other persons), defined by insurance contracts through insurance payments made by the insurance company through its assets

4. Discussion

One of the problems in the instant case is developing a definition of “economic regulation mechanism for the environmental protection and natural resources management”, because there is still no clear picture of this legal phenomenon.

This concept is missing in the Environmental Code of the Republic of Kazakhstan of January 9, 2007, however, Chapter 10 “Mechanisms for economic regulation of environmental protection and natural resources management” implies that there are such mechanisms and even some of them, but it is not clear what is meant by them.

In art.95 of Environmental Code of the Republic of Kazakhstan it is stated that the types of the mechanisms of economic regulation of environmental protection and natural resources management are:
- planning and funding for environmental protection;
- charge for emissions into the environment;
- charge for the use of certain types of natural resources;
- economic incentives for environmental protection;
- market-based mechanisms for managing emissions into the environment;
- market mechanisms of reducing emissions and absorption of greenhouse gases;
- environmental insurance;
- economic evaluation of damage caused to the environment.

The enumerated types are likely referred not to the types of mechanisms of economic regulation of environmental protection and natural resources management but to the activities. Of course, in theory the implementation of each activity is carried out by some mechanism, then one should specify the ‘mechanism of funding environmental protection”; “mechanism of environmental insurance”, etc.

In our opinion, there is no need for such detailization of mechanisms of economic regulation of environmental protection and natural resources management, it is enough to operate with a concept of “economic regulation mechanism for the environmental protection and natural resources management”.

It is also wrong, in our view, to indicate environmental protection event planning as mechanisms of economic regulation of environmental protection and natural resources management.

Planning is a function of management, therefore, planning in related not to economic methods of regulation but to administrative and legal or organizational methods.

For example, Kazakhstan scientist A.A. Mukasheva highlights “the state planning for natural resources management and environmental protection” among administrative practices in the field of environmental protection and natural resources management.

In researches the concept of “economic regulation mechanism of environmental protection and natural resources management” is defined differently. This concept is often referred to otherwise: “economic mechanism of environmental protection and natural resources management”, “eco-economic mechanism”, etc.

According to the Kazakh economist B.E. Soltanbekova “economic mechanism of environmental protection is a set of state regulation tools in the field of environmental protection, fostering natural resources users to the rational, comprehensive utilization of natural resources and contributing to the qualitative improvement of the environment”.

In our view, this definition narrows the scope of the economic mechanism of environmental protection because it does not include non-governmental regulatory instruments.

It is obvious that activities carried out by non-governmental organizations, enterprises, citizens-sponsors can be attributed to the methods of economic incentives. Besides we agree that the leading role in the whole regulation complex belongs to the state.

The Kazakh scientist S.S. Tyuleubekova believes that “the economic mechanism of environmental protection is a set of methods used by the state for environmental purposes aimed at using economic measures to influence the activities of entities engaged in natural resources management. Methods of the economic mechanism are specific economic ways of regulation of environmental relations through which the State ensures natural resources management and environmental protection”. This definition would be quite acceptable, however, further
when disclosing the content of the economic mechanism
S.S. Tyuleubekova\textsuperscript{11} includes herein administrative
methods; planning activities for environmental protection
and natural resources management (environmental
planning); environmental insurance.

According to the Kazakh scientist A.D. Rahmetulin\textsuperscript{8} “economic mechanism of environmental protection and
natural resources management is a set of economic tools
and methods that reflect adequately the needs of society
in environmental governance aimed at compensating
negative impacts on the environment and promoting
the development of environmentally balanced and
environmental facilities and activities”.

This author rightly points out that the economic
mechanism is a set of economic means and methods,
however, we cannot say that this mechanism adequately
reflects the needs of the community in an effective
natural resources management. For example, at present
in the Republic of Kazakhstan, the existing economic
mechanism of environmental protection and natural
resources management does not reflect the needs of
society in environmental governance, but, on the contrary,
is not effective enough, which caused the need for this
investigation.

Russian scientists V.D. Yermakov\textsuperscript{12} and A. Ya.
Sukharev\textsuperscript{12} indicate that economic mechanism of
environmental management is a system of rules of
economic and legal (civil, administrative, criminal, and
others) responsibility that ensure:
\begin{itemize}
  \item increasing the economic interest and responsibility of
    business entities in the implementation of environmental
    requirements;
  \item the formation and distribution of financial flows
    in order to use funds intended for the solution of
    environmental problems most effectively.
\end{itemize}

We do not agree with this definition, because economic
methods are mixed in this case with administrative ones.
Legal administrative, criminal liability norms will never
become the elements of the mechanism of economic
regulation since they are norms that provide punishment.

Russian scientist T.V. Petrova\textsuperscript{8} believes that “the
economic mechanism of environmental protection is a
system of interrelated legal forms mediating accumulation
processes, the directions and expenditures of financial
resources for solving practical problems of environmental
protection, reproduction and protection of natural
resources”.

In our view, this definition unnecessarily narrows
the scope of the mechanism for economic regulation
of environmental protection and natural resources
management because it lays emphasis only on the
financing of environmental protection measures. However,
the purpose of the mechanism of economic
regulation of environmental protection and natural
resources management is economic incentives of natural
resources users for the more environmentally oriented
production, hence the concept of mechanism includes
not only financing, but also other incentives, such as
preferential loans, exemption from payments to the
budget, and so on.

Belarusian scientist O.S. Shimova\textsuperscript{13} understands the
mechanism that covers all types of economic incentives
of natural resources management methods of positive
and negative motivation, investing environmental
measures, pricing environmental activities, financial
and tax regulations, etc. as the economic mechanism
of environmental protection and natural resources
management

There are two insignificant drawbacks in this
definition: first, there is no need to list all the types of
economic incentives – investment of environmental
measures, pricing in environmental activities, financial
and tax regulations; secondly, in the economic mechanism
economic incentives are aimed not only at natural
resources management, but also at the environment
reproduction and protection. Third, a mechanism for
economic regulation of environmental protection and
nature resources management presented by O.S. Shimova\textsuperscript{13}
is a set of economic incentives for natural resources users
aimed at their compliance with the natural resources
management, restoration and environmental protection.

Some scientists in the sphere of economy agree with
this. Thus, Yu. Mitina\textsuperscript{14} notes that “in new economic
conditions the system of economic methods of influence
on consumers – economic mechanisms in the framework
of which the basic principles of natural resources
management is implemented – resulting in the payment
by polluters and users of natural resources, started to play
a very specific role”.

Most approximate, in our view, to appreciation of the
mechanism of economic regulation of environmental
protection and natural resources management is the
definition proposed by Kazakhstan scientist S.D.
Bekisheva\textsuperscript{15}.
According to S.D. Bekisheva\textsuperscript{15} “the economic mechanism of environmental protection and natural resources management can be defined as the complex of the factors providing environmental protection regulation, reproduction and natural resources management through economic methods”. This definition would be more complete if the author had explained what is meant by economic methods.

In our opinion, the mechanism of economic regulation of environmental protection and natural resources management is not called “the mechanism” by chance because it is not simply a set of mechanical tools and instruments.

As V.V. Boboshko\textsuperscript{16} rightly states, “the mechanism of ecological and economic regulation is based on three aspects:
- The institutional aspect – “who” controls “what”;
- The functional aspect – “how” an ecological and economic regulation is carried out and “how” it affects small businesses;
- The instrumental aspect – “by what” an ecological and economic regulation is carried out.

Therefore, the mechanism of economic regulation of environmental protection and natural resources management consists of the following elements:
- The institutional aspect – state, non-governmental associations, etc. streamline operations of nature resources users;
- The functional aspect – by providing specific effects;
- The instrumental aspect – by means of economic incentives.

\section*{5. Conclusion}

Thus, the analysis of some scientists’ views leads us to clarification of the definition of a mechanism for economic regulation of environmental protection and natural resources management:

“The mechanism of economic regulation of environmental protection and natural resources management is a set of factors providing economic incentives of natural resources users in order to comply with their natural resources management, restoration and environmental protection”.

In this definition we introduced the mechanism of economic regulation of environmental protection and natural resources management as a set of specific factors or elements, which include: 1) the entities that provide economic incentives for natural resources users; 2) the system of legal norms that supports the activities of these entities; 3) the process of regulation of natural resources users’ behavior by these entities. This idea was proposed by Kazakh scientists D.L. Baydeldinov\textsuperscript{17} and S.D. Bekisheva\textsuperscript{15} who, noting the complex structure of the economic mechanism, which reflects not only a system of measures laid down in the standards, but also the process of implementation of these measures, including the bodies implementing these measures, refer to its constituent elements:
- the system of state bodies carrying out ecological functions;
- the system of legal norms that support the activities of these bodies and how the way they interact with natural resources users;
- the government agencies’ impact process performing ecological functions, on the behavior of natural resources users and other entities.

However, we believe that the constituent elements enumerated by them in the overall picture do not give a complete view of the mechanism of economic regulation of environmental protection and natural resources management, because only the impact of the state on natural resources users is considered in this case, without referring to stimulating possibilities of civil society, non-governmental organizations, public associations, the citizens of the Republic of Kazakhstan.

\section*{6. Acknowledgments}

Scientists specializing in environmental issues such as Anar Abayhanovna Mukasheva, Doctor of Law, Professor of L.N. Gumilyov Eurasian National University, Zhumash Hazhimbaevich Kossanov, Doctor of Law, Professor of L.N. Gumilyov Eurasian National University rendered assistance when creating this article.

\section*{7. References}

3. Vershilo ND. Legal Regulation of Environmental Protection Funding. Extended Abstract Dissertation (PhD in Law), Saratov. 1999; 23–6 [in Russian].