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### **Revisiting the concept of a recreational zone**

The article analyses various scientists' points of view, as well as the legislation of Russia, Kazakhstan and Belarus, which regulates the legal status of recreational areas. The aim of the research work is the study of the effectiveness of environmental legislation in terms of the grounds for the emergence and registration of the right of recreational natural resources management, the analysis of legislation on recreational nature management and the identification of the peculiarities of this legal phenomenon, the development of recommendations and proposals aimed at improving environmental law. The methodological basis of the study is the modern doctrine of the interaction of economics and the environment, constitutional provisions in the field of nature management and environmental protection. In the work, general scientific methods were used: comparative legal, logical, systemic and historical methods. The novelty of the article lies in the fact that a definition of the right of recreational nature management is given and its classification is developed, a system of principles of the right of recreational nature management is developed, the place of norms on recreational nature management in the system of environmental law of the Republic of Kazakhstan is determined, the state-legal mechanism in the field of recreational nature management is studied, and also the ways to improve it were proposed, a comparative analysis of the legislation of the countries of the near abroad in the field of recreation nature management is made. As a result, the author argues the conclusion that there is a need to regulate the use of existing terms. In this regard, a recreational zone should be understood as a part of the natural environment (natural habitat) or human environment (artificial environment), intended for recreation, restoration of the population's forces.

*Keywords:* land plot, recreation area, forest parks, beaches, resorts, body of water, specially protected natural areas, recreation areas, tourism, safari tourism.

#### *Introduction*

With the acquisition of state independence by the Republic of Kazakhstan in 1991 and the proclamation of the transition to a market economy, the need for transforming nature management relations arose, adapting them to market conditions, creating legal, economic and organizational conditions for the equal development of all forms of ownership and derivatives of nature management rights, protecting rights to natural resources of citizens and legal entities. As a result of this, the composition of the subjects of nature management relations on natural resources has fundamentally changed in the Republic, new types of property rights to natural resources have arisen. However, the problem of rational use of natural resources and environmental protection has remained to this day. «... over the course of many decades, Kazakhstan has developed a predominantly resource-based environmental management system with extremely high technogenic environmental loads. Therefore, a radical improvement of the environmental situation has not yet occurred and it is still characterized by the degradation of natural systems, which leads to the destabilization of the biosphere and the loss of its ability to maintain the quality of the environment necessary for the life of society».

Preservation of a favorable natural environment is an important task at this stage of development of our state. This statement is fixed at the constitutional level. So, Article 31 of the Constitution of the Republic of Kazakhstan states: «The state sets the goal of protecting an environment favorable to human life and health». It is easy to imagine a thriving economy in which people from year to year become sicker as a result of an incorrect approach to their health and a polluted environment. As we build our society, we must apply increasing efforts to ensure that our citizens are healthy throughout their lives and are surrounded by a healthy natural environment. Our strategy to achieve this goal consists of the following components: prevention of diseases and promotion of a healthy lifestyle. World experience shows that the most important factor affecting the health of the population of countries is the state's steps to prevent disease, on the one hand, and to stimulate a healthy lifestyle, on the other. Disease prevention involves the use of clean water and healthy food, the availability of treatment systems, the reduction of facilities that pollute the

So, at the present stage, the preservation of the of Kazakhstan people's health and the protection of the environment are becoming the dual goal of our state.

Creating conditions for a complete rest of the population of the Republic of Kazakhstan is one of the tasks to achieve this goal. This opportunity is provided by the use of the natural environment for recreation and tourism, namely, the right of recreational nature management.

The objects of research in this case are legislative and other regulatory legal acts in the field of recreational nature management and the practice of their application.

The purpose of the study is to study the issues of the effectiveness of environmental legislation in terms of the grounds for the emergence and execution of the right of recreational nature use, analysis of legislation on recreational nature use and the identification of the features of this legal phenomenon, the development of recommendations and proposals aimed at improving environmental law.

Based on the purpose of the study, the author sees its achievement by solving the following tasks:

- explore the environmental legislation of the Republic of Kazakhstan from the moment of the formation of the Republic of Kazakhstan as a sovereign state to the present and identify the main stages of its development;
- assess the state of existing environmental legislation in relation to recreational nature management and the practice of its application in order to identify shortcomings and gaps in legal regulation;
- consider the concept and content of the right of recreational nature management in accordance with the legislation of the Republic of Kazakhstan and formulate its optimal definition;
- identify the principles of the right of recreational nature management;
- determine the place of the right of recreational nature management in the system of environmental law;
- explore the state-legal mechanism in the field of recreational environmental management;
- to conduct a comparative analysis of the legislation of the countries of the near abroad in the field of recreational nature management;
- on the basis of the study, develop theoretical provisions and recommendations aimed at improving environmental legislation, as well as the practice of its application.

Conclusions, suggestions and recommendations contained in the paper are both theoretical and practical importance and can be used in the determination and the basic directions of legislative activity in the field of environmental management, in improving the work of the executive authorities and management, management of enterprises and organizations carrying out their activities in recreational areas.

#### *Methods and materials*

The methodological basis of the study is the modern doctrine of the interaction of economics and the environment, constitutional provisions in the field of nature management and environmental protection.

In the work, general scientific methods were used: comparative legal, logical, systematic and historical methods.

In formulating the theoretical principles, the author relied on the works of domestic and foreign leading legal scholars in the field of the general theory of law, environmental science, and administrative law.

The works of ecologists, economists, representatives of other branches of knowledge, who studied environmental problems were used in the paper.

When conducting the study, the author was guided by the provisions of the Constitution of the Republic of Kazakhstan, the current environmental legislation, legislation on tourism, reviews, generalizations, and statistical reporting documents on recreational nature management were also used.

### Results

In the last decade in the Republic of Kazakhstan, more and more attention has been paid to the development of leisure and tourism in the Republic. In accordance with the Concept for the Tourism Industry Development of the Republic of Kazakhstan dated June 30, 2017, recreational zones of two large regions are actively developing, in which two capital cities of Kazakhstan are located (the old one is Almaty and the new is Astana), which is due in the first case to the proximity of the Great Silk Road (Almaty is nodal complex of the tourism system of the Silk Road part), in the second — the proximity of the Shchuchinsko-Borovskaya resort zone, the Kurgaldzhino nature reserve [1].

Taking into account the growing interest in the legal provision of tourism and recreation, the need for a more detailed and thorough study of the conceptual apparatus of the Institute of Recreational Nature Management arose. Moreover, the development of the concept of «recreational zone» is very relevant, since in our legislation there is no official definition of a recreational zone, although there are references to recreational zones and recreational activities.

So, in the Law of the Republic of Kazakhstan «On Architectural, Urban Planning and Construction Activities in the Republic of Kazakhstan» dated July 16, 2001 the purpose of the recreational areas in the settlements is indicated. According to Article 51 of this law, recreational areas in settlements are intended for the organization and arrangement of recreation facilities for the population and include gardens, forest parks, parks and squares, zoos, ponds, beaches, water parks, landscape architecture, other places of recreation and tourism, as well as buildings and facilities for leisure and (or) recreational purposes. Protected natural sites located within the boundaries (lines) of the settlement may be included in the recreation area. On the territory of the recreational zone the placement (construction) of new and expansion of existing industrial, communal and storage facilities, buildings and structures for civil purposes, not directly related to the functioning of the recreational zone are not allowed [2].

The government rules and regulations, concerning the development of tourism and recreation in Astana and Almaty, stipulate the creation of recreational areas, the development of a comprehensive urban program for the development of recreational infrastructure to serve the new economic sector of these cities — tourism. The aim of this program is to create a new efficient sector of the city's economy, using the potential of the historical and cultural heritage and the unique natural environment of the city and able to radically solve the financial problems of preserving, restoring and renewal the historical heritage and natural potential [3]. As a matter of fact, the mention of recreational areas is limited only by these normative acts.

### Discussion

The Law of the Republic of Kazakhstan «On Specially Protected Natural Areas» of July 7, 2006 refers to the recreational load, recreational activities, recreational lands [4]. Land of recreational purposes in the Land Code of the Republic of Kazakhstan dated June 20, 2003 is considered in more detail. So, according to Article 126 of the Land Code of the Republic of Kazakhstan dated June 20, 2003, lands destined for recreational purposes are recognized as lands intended and used for organized public recreation and tourism. The structure of recreational land may include land on which there are rest houses, boarding houses, campsites, physical education and sports facilities, tourist camps, stationary and tent tourist camps, houses of fishermen and hunters, forest parks, hiking trails, trails, children's and sports camps, other similar facilities. Lands of recreational purposes also include the lands of suburban green areas [5]. As for the fundamental regulatory legal act in the field of use and environmental protection that is the Environmental Code of the Republic of Kazakhstan dated January 9, 2007, it does not only lack the concept of «recreational zone», but it does not even fix the environmental requirements for recreational lands.

So, in Environmental Code of the Republic of Kazakhstan there is Article 212 «Environmental requirements for the use of lands of specially protected natural territories and recreational lands», however, in addition to the indicated categories of lands in Kazakhstan, they are allocated as an independent category of recreational lands [6]. As you can see, there is a conceptual «vacuum» in the legal regulation of the institution of recreational environmental management. To eliminate this situation, it is necessary, first of all, to develop the concept of «recreational zone». The word «recreation» is of Latin origin.

Recreation is recovery. Recreation is a rest, a restoration of human forces expended in the process of labor. «Zone» in Greek means belt. Here it is meant a strip, the space between any boundaries; territory, site of something characterized by certain signs [7; 1008]. Thus, a recreation zone is a territory, a site intended for recreation, restoration of human strength. In the legal literature, attempts have been made to determine the recreational area [8; 115].

V.V. Petrov, Dzhurovich M., Rode G., and others developed the following definition: «recreational zones are natural or cultivated areas of land or water that are intended for organized or mass recreation or tourism of the population». This opinion is shared by B.V. Erofeev [9; 208].

In our opinion, this definition is not complete enough, since it does not include subsoil areas that are used for recreational purposes. For example, in paragraph 2 of Article 77 of the Law of the Republic of Kazakhstan «On Specially Protected Natural Areas» dated July 7, 2006, so-called geomorphological objects are indicated as terraces, floodplains, caves, gorges, canyons, waterfalls and other relief forms that clearly reflect the processes of relief formation and of particular value for tourism and recreation. Later V.V. Petrov proposed the following definition: recreation zones are a part of the environment used for recreation and tourism, including green, resort, health-improving zones [10; 431].

We also consider it insufficiently complete, since V.V. Petrov used the term «environment» in the definition, although he himself understands it as that part of the natural environment that has been transformed as a result of human activity. Consequently, in the definition of the recreational zone, only natural areas in settlements are indicated and areas of the natural habitat are not reflected. And we know that recreational areas are an integral part of national natural and regional natural parks. In our opinion, it should be indicated — «part of the space of the natural environment», since this concept is broader and includes both the natural habitat and the human environment. The legislation of some CIS countries defines the recreational area. So, in the Town Planning Code of the Russian Federation of December 29, 2004 N 190-ФЗ the so-called recreational zones are indicated, which may include zones within the boundaries of territories occupied by city forests, squares, parks, city gardens, ponds, lakes, reservoirs, beaches, as well as within the boundaries of other territories used and intended for recreation, tourism, physical education and sports [11]. In accordance with the Law «On Architectural, Urban Planning and Construction Activities in the Republic of Belarus», recreational zones of settlements are territories intended for organizing places of recreation for the population and include parks, city forests, forest parks, beaches and other leisure and tourism facilities [12]. In the above two cases, the recreation area is considered as an integral part of the settlement, i.e. located within the city limits. In the Law of Ukraine «On Environmental Protection» dated June 25, 1991, a different concept of a recreation zone is given: «a recreation zone is land or water areas intended for organized mass recreation and tourism» [13]. In this case, the recreation area is considered as an integral part of the natural environment. It is worth mentioning another interpretation of the recreational area. Recently, many businessmen have been considering the recreational area as that part of the business center that is specially allocated for the rest, primarily of employees working in it [14].

Thus, the recreational area here is a completely artificial environment, with which we do not agree. Some scholars reject the concept of «recreational area» and propose replacing it with the term «recreational territory». For example, L.A. Samusenko believes that «the more acceptable general term for designating places intended for recreational use is the term natural recreational territories [15; 97], and not «zones», «lands», etc. The preference for using the definition of «territory» is confirmed by an analysis of legal literature, as well as legislation on specially protected natural territories, urban planning legislation, in which it is widely used».

In contrast to this opinion, we believe that the term «recreational zone» is more preferable than «recreational territory», since the concept of «zone» involves not only the use of a territorial attribute, but also the establishment of a special regime of use and protection. In addition, the concept of «recreational land» has already been established in the legislation of the Republic of Kazakhstan, and some authors identify these two concepts. So, I.I. Pyrozchnik and V.M. Zaitsev consider recreational territories as lands acting as recreational lands, occupied by tourist complexes, infrastructure enterprises and communications, related to their maintenance, possessing resource potential, but do not clearly determine their composition [16; 54]. Some authors, when determining the composition of recreational territories, in spite of the fact that they distinguish recreational zones as independent objects, indicate as a constituent part precisely «land» and not «territory». So, according to A.G. Bobkova natural recreational territories — territories suitable for organizing recreation for the population, renewing vitality and human energy, recognized as such in the manner prescribed by law, the regular use of which is possible in the implementation of recreational activities [17; 64]. It refers:

- health, recreational, historical and cultural lands;
- plots of land for environmental purposes, having a regime of recreational use;
- separate plots of land of forest and water resources suitable for recreational use;
- certain land plots of settlements with recreational purposes (parks (culture and recreation, regional, sports, children's, historical, memorial and others), public gardens, boulevards, embankments, forest parks, meadow parks, water parks, gardens of residential areas, etc.);
- other territories suitable for recreational use.

Some authors consider recreational areas as places that are of mass organized recreation for the population. At the same time, they believe that «recreational territories may consist, firstly, of recreational lands proper and, secondly, of economic lands, that is, lands of various types of activity, but specializing in servicing recreants» [18; 129].

### Conclusions

As one can see, the meaning of distinguishing an independent category of «recreational territories» is that this concept is broader than «recreational land», because for the recreation and the rest we use other categories of land, for example, recreational, historical and cultural land destination; separate plots of land of forest and water resources suitable for recreational use; lands of specially protected natural territories.

So, G.A. Potaev believes that «recreational areas should be considered as an integral part of a unified system of protected natural areas, including: specially protected natural areas — nature reserves, wildlife sanctuaries, nature monuments, wildlife migration corridors, protective areas (water protection, road, soil and windbreaks, sanitary protection zones, etc.); territories on which environmental and recreational functions are combined — national parks, green zones of cities; recreational areas — resorts, long and short-term recreation areas, tourist centers and routes [19; 123].

At the same time, the meaning of the concepts «recreational territory», «recreational zone» can be expanded due to the literal interpretation of the term «recreation» — rest, leisure time. And not only the natural environment, but also the artificial environment can be used for relaxation: any room with upholstered furniture, a winter garden, a smoking room, a restaurant, etc.

Summarizing all of the above, we believe that there is a need to streamline the use of the above terms. In our opinion, a recreational zone should be understood as a part of the natural environment (natural habitat) or human environment (artificial environment), intended for recreation, restoration of the population's energy.

Recreational areas can be divided into natural recreational areas and artificial recreational areas.

Recreational areas can be located not only on lands of recreational purposes, but also on lands of settlements, lands of health, historical and cultural purposes, lands of specially protected natural territories.

The concept of «recreational zones» is synonymous with the concept of «recreational territories», since the concepts of «zone» and «territory» are identified in dictionaries («Zone» in Greek means a belt. It means a strip, the space between any boundaries; territory, site of something characterized by certain signs).

Analysis of the environmental and other legislation of the Republic of Kazakhstan shows that it is necessary to adopt new regulations and supplement existing ones.

Firstly, in the Environmental Code of the Republic of Kazakhstan in the conceptual apparatus there is no definition of a recreation zone. In our opinion, such a definition should be included in Article 1 of this law.

Secondly, this definition should be indicated in the Law of the Republic of Kazakhstan «On Architectural, Urban Planning and Construction Activities in the Republic of Kazakhstan» dated July 16, 2001.

Thirdly, the Code of the Republic of Kazakhstan on people's health and the healthcare system of September 18, 2009 should be supplemented and the definition of a recreational zone should be included in the conceptual apparatus.

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## Рекреациялық аймақтың түсінігі жөніндегі кейбір мәселелер

Мақалада рекреациялық аймақтың құқықтық мәртебесін реттейтін Қазақстан және Беларусь, Ресей заңдылықтары мен әр түрлі ғалымдардың көзқарастарына талдау жасалған. Зерттеудің мақсаты рекреациялық табиғат пайдалану құқығының пайда болуы мен рәсімделуіне байланысты экологиялық заңнамалардың тиімділігі мәселелерін зерттеу, рекреациялық табиғат пайдалану туралы заңнамаларына талдау жасау және осы құқықтық құбылыстың ерекшелігін анықтау, экологиялық құқық нормаларды жетілдіруге бағытталған әдістемелер мен ұсыныстарды өңдеу болып табылады. Зерттеудің әдістемелік негізі қоршаған орта мен экономиканың арақатынасы туралы қазіргі кездегі ілімдер, қоршаған ортаны қорғау мен табиғатты пайдалану саласындағы конституциялық ережелер болып табылады. Жұмысты жазу барысында жалпы әдістемелік ғылыми-танымдық сипаттағы салыстырмалы-құқықтық, қисындық, тарихи, жүйелік және басқа да әдістер қолданылды. Мақаланың зерттеу жаңалығы рекреациялық табиғат пайдалану құқығына анықтама берілуі және оның жіктелу негіздерінің өңделуі, рекреациялық табиғат пайдалану құқығы қағидаларының жүйесін ұсыну, Қазақстан Республикасы экологиялық құқық жүйесіндегі рекреациялық табиғат пайдалану туралы нормалардың алатын орнының анықталуы, рекреациялық табиғат пайдалану саласындағы мемлекеттік-құқықтық механизмі зерттеліп, сондай-ақ, оны жетілдіру жолдарының көрсетілуі мен кейбір шетел мемлекеттерінің рекреациялық табиғат пайдалану құқығы саласындағы заңнамаларына салыстырмалы талдау жасалынып, рекреациялық табиғат пайдалану қатынастарын құқықтық реттеу саласында экологиялық заңдарды жетілдіру бойынша ұсыныстар мен нұсқаулар ұсынылған. Нәтижесінде автор қолданыстағы терминдердің қолдануды оңайлату қажеттілігі туралы тұжырым жасайды. Осыған байланысты рекреациялық аймақты демалуға, халықтың күшін қалпына келтіруге арналған табиғи орта (табиғи тіршілік ету ортасы) немесе адами орта (жасанды орта) бөлігі ретінде түсіну керек.

*Кілт сөздер:* жер учаскесі, рекреациялық аймақ, орман парктері, жағажайлар, курорттар, су кеңістігі, ерекше қорғалатын табиғи аумақтар, демалыс орындары, туризм, сафари туризмі.

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## К вопросу о понятии рекреационной зоны

В статье проанализированы точки зрения различных ученых, а также законодательства России, Казахстана и Беларуси, регулирующие правовое положение рекреационных зон. Целью исследовательской работы является изучение вопросов эффективности экологического законодательства в части, касающейся оснований возникновения и оформления права рекреационного природопользования, анализ законодательства о рекреационном природопользовании и выявление особенностей этого правового явления, разработка рекомендаций и предложений, направленных на совершенствование норм экологического права. Методологической основой исследования являются современное учение о взаимодействии экономики и окружающей среды, конституционные положения в области природопользования и охраны

окружающей среды. В работе применялись общенаучные методы: сравнительно-правовой, логический, системный и исторический. Новизна статьи заключается в том, что дано определение права рекреационного природопользования и разработаны его классификация, система принципов права рекреационного природопользования, определено место норм о рекреационном природопользовании в системе экологического права Республики Казахстан, исследован государственно-правовой механизм в области рекреационного природопользования. Предложены пути его совершенствования, проведен сравнительный анализ законодательства стран ближнего зарубежья в области рекреационного природопользования. В результате авторы аргументируют вывод о необходимости упорядочения использования существующих терминов. В связи с этим под рекреационной зоной следует понимать часть окружающей природной среды (естественной среды обитания) либо окружающей человека среды (искусственной среды), предназначенную для отдыха, восстановления сил населения.

*Ключевые слова:* земельный участок, рекреационная зона, лесопарки, пляжи, курорты, водное пространство, особо охраняемые природные территории, зоны отдыха, туризм, сафари туризм.

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