

POLITICO-LEGISLATIVE ASPECTS OF EMERGENCY ECOLOGICAL SITUATIONS AND THE CHARACTERISTIC OF THEIR FACTORS OF THEIR EMERGENCY

Azizov Tukhtamish Azamovich,

The competitor of the department "Theory and practice of building a democratic state and civil society" of the Faculty of Social Sciences of the National University of Uzbekistan named after. Mirzo Ulugbek
azizov_t@uzswlu.uz



<http://dx.doi.org/10.26739/2573-5616-2018-3-1-3>

Annotation: In the article some conceptual characteristics of extreme ecological situations, the ratio of the legislation of the Republic of Uzbekistan and the Russian Federation characterizing the content and essence of the concept of an emergency ecological situation in these countries, assessment of political aspects, conceptual signs of environmental emergencies and the factors of their occurrence are considered.

Key words: ecological unfavorable territories, environmental emergencies, ecological crisis, ecological disasters, emergency zone, ecological disaster zone, ecologically dangerous incidents, ecologically crisis phenomena, destructive influence, accident, disaster, emergency events.

One of the most important functions of any modern state is to ensure the security of the state and society from external and internal threats, which can be the consequences of emergencies, military and other conflicts, etc. With the emergence and development of environmental policies of individual states, there is an understanding that a systematic understanding of the political and legal aspects, the foundations of the environmental crisis, environmental policy is necessary. For these purposes, it is necessary to conduct a political and legal discourse that serves as the basis for creating a legislative base, the formation of state and administrative structures, monitoring, establishing a system of prevention, coercion and bringing to justice, conducting ideological and educational work among the population, and others. In short, the state uses all political, legal and organizational forms of its activity to fulfill this task[1].

In order to ensure the safety of man, society and the state from the threats of emergencies caused by man-caused and natural accidents, their

prevention and elimination play a major role. The activities of state and non-state bodies in this sphere are based on the application of legal norms and standards, political means, which, as a product of law-making work of state bodies, require constant improvement. Perfection of the legislation, among other things, covers the processes of theoretical research of accumulated problems, comprehension, taking into account the new realities of the practice of political and legal regulation, objects of regulation and the criteria that characterize them, elements and details.

This article deals with the legislative policy and practice of the two states (RUz and RF), therefore, first of all, it is necessary to study the main provisions characterizing the content and essence of the concept of an emergency environmental situation in these states. It is particularly important to identify and assess the political aspects, conceptual signs of environmental emergencies and the factors that lead to them.

Let's start with the most generally recognized in the Russian political and legal science doctrinal concept of "ecological disadvantaged areas." This scientific concept since its inception, i.e. since the 90s of the last century, has a strong influence on the development of political and legal concepts of "environmental emergencies" and "environmental disasters", as well as the "zones" created on their basis. It should be noted that in the political science and legal science of Uzbekistan the concept of "emergency unfavorable situation" is not mentioned. As it is absent in legislation and practice. Here in the legislation and science such concepts as, for example, "extreme ecological situations", "ecological crisis", "ecological disasters", etc., appear[2].

The Russian law "On Environmental Protection"[3] also does not contain the concept of "ecological unfavorable territories".

Despite this, as mentioned above, the concept of ecologically unfavorable territories is used in the literature as a doctrinal concept. The literature contains an opinion on the definition of ecologically disadvantaged areas.

Thus, for example, according to M.M.Brinchuk, "from a legal point of view, an ecologically unfavorable territory is understood to be a site of a territory whose environmental condition corresponds to the criteria established in the legislation necessary for the allocation of special zones in order to restore favorable environmental conditions"[4]. He also based on the RSFSR Law of December 19, 1991, No. 2060-1 "On Environmental Protection"[5] (Article 58), spoke of the existence of two types of ecologically unfavorable territories: the emergency zone and the zone of ecological disaster[6].

The concept of "ecologically unfavorable territories" recognized by M.M.Brinchuk as general in comparison with an emergency ecological situation and ecological disasters is present in his later works[7].

Despite the absence of the definition of "environmentally unfriendly territories" in the Russian environmental science in the 2002 Law on Environmental Protection, scientists are increasingly manipulating this concept. So, for example S.A. Bogolyubov "extreme ecological situation" and "ecological disaster" refers to types of ecologically unfavorable territories[8].

Other authors argue that practically all the republics, regions and regions of the Russian Federation do not exclude the existence of ecologically unfavorable territories[9].

Some authors, recognizing the absence in the Federal Law of January 10, 2002 of the 7-FL "On Environmental Protection"[10] of the concept of ecologically unfavorable territories, characterize them as phenomena with a special legal regime[11].

Some researchers, deep in the definition of environmentally unfriendly territories, believe that "The concept of environmental ill-health, in fact, consists of two components - pollution of the environment and the resulting deterioration in public health"[12].

A legitimate question arises: what is the definition of "ecologically unfavorable territories": a theoretically invented generalizing formulation or a legally formal concept. This question can be answered as follows.

The concept of "ecologically unfavorable territories" should be considered as a general theoretical formula, since it is not mentioned in the Federal Law of the Russian Federation of January 10, 2002 No. 7-FL "On Environmental Protection"[13] and in the Law of the Republic of Uzbekistan of December 9, 1992 No. 754-XII "On the Protection of Nature"[14]. Moreover, it seems to us that such theoretical formulations as, for example, "ecologically dangerous incidents" or "ecologically crisis phenomena" can be used to characterize a situation that creates a threat to the environment. This approach is in accordance with the provisions of the law. But to put an equal sign between the concepts of an ecologically unfavorable territory and its varieties, which, according to some scientists, are zones of extreme ecological situation and ecological disaster, it would be illogical.

The Russian Law "On Environmental Protection" not only does not mention the ecological unfavorable territories, but also does not fix the concept of "emergency environmental situation". It refers to "emergency situations" that are subject to regulation not of an environmental law - the Law "On Protection of the Population and Territory from Emergencies of Natural and Technogenic Character". It establishes the regulation of "environmental protection in emergency zones ... Federal Law of the Russian Federation of December 21, 1994 No. 68-FZ" On the protection of the population and territories from natural and man-made emergency situations"[15].

From this it follows that this law, conceptually, firstly, does not "recognize" the existence of such an independent category as an "emergency

environmental situation" or does not distinguish it from the "emergency situation subordinate to the Ministry of Emergency Situations of the Russian Federation"[16], secondly, it contains a reference to the fact that "emergency situations" are not included in its subject matter, but are the subject of the law on protecting the territory and population from natural and man-made emergency situations.

Unlike the Law of the Russian Federation, the Law of the Republic of Uzbekistan "On Nature Protection"[17] (1992) contains a special chapter called "Emergency Environmental Situation". In accordance with this chapter, two completely different formal types of environmental emergencies are distinguished: the "emergency environmental situation" and the "ecological disaster zone". It is interesting that the lack of norms in the Russian Law on emergency environmental situation does not prevent researchers from developing the theoretical and legal foundations of this category even now[18].

A certain part of such theoretical developments concerns the identification of certain criteria for "emergency situations" and "emergency environmental situations". For example, the Russian author N.G. Zhavoronkova pays attention only to one criterion of emergency situations - disastrous consequences: human and material[19].

Unlike the Law of the Russian Federation "On Environmental Protection"[20], the Law of the Republic of Uzbekistan "On Nature Protection" fixes the concept of zones of emergency environmental situations and zones of ecological disaster.

So, according to Article 39 of this Law, "Areas of an emergency ecological situation are declared areas of territories, including water and airspace where, as a result of economic and other activities, the destructive influence of natural forces of nature or an accident or catastrophe, there are stable negative changes in the natural environment, threatening the health of people, the state of natural ecological systems, genetic funds of plants and animals".

The position of Art. 39 of the Law of the Republic of Uzbekistan "On Nature Protection" on "the destructive effect of natural forces of nature or an accident or disaster" is the basis for singling out one of the main criteria of emergency environmental situations, which we will designate as the suddenness of the danger to the environment.

A sudden occurrence of a dangerous incident is the basis for declaring the territory covered by the zone of an emergency environmental situation. A dangerous situation that has arisen as a result of the long negative impact of economic or other activities should be called an ecological disaster, and the emerged situation is recognized as a zone of ecological disaster.

The suddenness of the emerged situation is the main criterion in the characteristics of an emergency environmental situation, which distinguishes it from the definition of an ecological disaster zone. The draft of the Russian Federal Law "On zones of ecological disaster" contained a definition of the zone of ecological disaster. It was understood as a territory characterized by a high level of environmental pollution, an increase in the incidence and (or) mortality of the population, degradation and destruction of natural environmental factors caused by the long negative impact of economic and other activities on the environment (Article 1)[21]. Proceeding from this, it should be concluded that natural phenomena (natural disasters) are not the reason for declaring a zone of ecological disaster.

In view of the foregoing, it is difficult to agree with the opinion that the differences between the BSEC zones and the zones of ecological disaster are the nature of environmental changes: for the BSEC zones, there are stable negative changes in the natural environment, and for the ecological disaster zones - its profound irreversible changes[22]. As it was noted in the literature, in order to recognize the situation as environmentally hazardous it is necessary to identify such negative impact on the environment, which gives rise to certain environmental, social or economic consequences[23].

Legislative concepts as "destructive influence", "accident", "catastrophe" contained in Art. 39 of the Law of the Republic of Uzbekistan "On Nature Protection" speak of the sudden occurrence of environmental emergencies. And in this sense it is difficult to share the opinion of A.N. Gorbachev[24] that extraordinary ecological situations arise from prolonged negative industrial, agricultural and other economic impacts on the environment.

The origin of man-made disasters, accidents, etc. or natural (technogenic-natural) disasters as an extremely arisen legal fact is recognized according to art. 39 of the Law of the Republic of Uzbekistan "On Nature Protection". It should be noted here that the procedure of "announcement" in order to give official legal status to an object or phenomenon is one of the main elements of its legal status[25].

The most significant for the qualification of an emergency incident as an emergency ecological situation is the presence of an environmental hazard - environmental damage, i.e. "Sustainable negative changes in the natural environment" (Article 39 of the Law of the Republic of Uzbekistan "On Protection of Nature") as a result of which both people and elements of the material world will suffer. The ecological nature of the consequences of a sudden situation, which is accompanied by economic or even social consequences, is the basis for considering the emergency situation "ecological". Therefore, this qualification criterion is of great importance in the formation of the legal concept of the BSEC.

The environmental hazard factor as a qualification criterion for environmental emergencies should be assessed as significant. A significant environmental hazard is characterized by the occurrence of diseases and the death of animals and plants, the destruction of fish stocks and spawning and feeding grounds, air pollution to a state that causes a sudden illness or death of people, animals (living organisms) and plants, or creates the danger of changing the radioactive background to values that are dangerous for animals and plants, for human health and life[26].

If, as a result of an emergency, there are no negative changes in the environment or there is no loss (damage) in the environment (or is not foreseen in the future), this cannot be called an emergency environmental situation. So, for example, a production accident, as a result of which only people were injured and material damage occurred, is not an ecological incident. The same can be said for natural emergencies. Let's put it this way: if as a result of a devastating earthquake the population suffered and damage to citizens and the state, and its environmental consequences are not noticeable, the situation that emerged can hardly be considered an emergency environmental situation. Proceeding from this, it should be noted that it is difficult to call extraordinary ecological situations, in our opinion, the unfavorable state of the environment, which was not formed as a result of specific accidents or catastrophes, but also natural disasters, i.e. in the process of a sudden anthropogenic or natural occurrence. Therefore, a dangerous environmental situation that arises as a result of the long negative impact of economic or other activities and is declared by the relevant state body as an environmental emergency zone cannot be called, in a legal sense, an emergency environmental situation.

It should be added here that, according to foreign legislation, the absence of even real damage can be the basis for declaring a situation in which the degree of environmental degradation in a certain region causes difficultly liquidated negative environmental consequences that ultimately become a threat to the preservation of the natural environment and sustainable development[27].

If, as a result of an emergency, there are no negative changes in the environment or there is no loss (damage) in the environment (or is not foreseen in the future), this cannot be called an emergency environmental situation. So, for example, a production accident, as a result of which only people were injured and material damage occurred, is not an ecological incident. The same can be said for natural emergencies. Let's put it this way: if as a result of a devastating earthquake the population suffered and damage to citizens and the state, and its environmental consequences are not noticeable, the situation that emerged can hardly be considered an emergency environmental situation. Proceeding from this, it should be

noted that it is difficult to call extraordinary ecological situations, in our opinion, the unfavorable state of the environment, which was not formed as a result of specific accidents or catastrophes, but also natural disasters, i.e. in the process of a sudden anthropogenic or natural occurrence. Therefore, a dangerous environmental situation that arises as a result of the long negative impact of economic or other activities and is declared by the relevant state body as an environmental emergency zone cannot be called, in a legal sense, an emergency environmental situation.

It should be added here that, according to foreign legislation, the absence of even real damage can be the basis for declaring a situation in which the degree of environmental degradation in a certain region causes difficultly liquidated negative environmental consequences that ultimately become a threat to the preservation of the natural environment and sustainable development.

The RF Law "On Nature Protection", using such terms as "accident" and "catastrophe" are not their definitions. Despite this, in the Law of the Russian Federation "On Industrial Safety" the legal concept is defined as an accident - the destruction of structures and (or) technical devices used at a hazardous production facility, an uncontrolled explosion and (or) the release of hazardous substances. Exactly the same concept of the accident[28] is contained in the Law of the Republic of Uzbekistan "On Industrial Safety of Hazardous Production Facilities" of August 25, 2006[29].

The legislative concept of the accident includes an explosion, fire, uncontrolled emissions of hazardous substances, damage to technical devices, occurred for constructive, production, technological or operational reasons, accidental external influences that may result in or resulted in loss of life, damage to human health and the environment, loss and violation of living conditions of people[30].

Accident (catastrophe) is the main sign of anthropogenic emergency situations, while natural spontaneous phenomena do not arise as a result of accidents (catastrophes). The current industrial safety laws indicate two signs of accidents:

1) destruction; 2) uncontrolled explosion and (or) release of hazardous substances. And the issue of accounting for the consequences of accidents remains open.

It should be emphasized that it is the consequences that arise as a result of accidents that should determine or assess the nature of the emergency situation. In our opinion, accidents (catastrophes) in terms of the nature of the consequences should be divided into those that affect the environment, as a result of which (irreversible) phenomena in the environment may arise (and arise), and in the future a threat to the health or life of people. Here, as an example for the first case, there is an

accident at a marine oil well or oil tanker, forest fires, and so on. In the second case, the consequences of the accident can have an impact on the health and lives of people or lead to their death, as well as lead to material losses. For example, if an explosion occurred at the enterprise and people died, and the absence of any environmental impact did not lead to irreversible consequences, this case cannot be assessed as an emergency environmental situation.

To recognize the accident and the consequences of an emergency ecological situation associated with it, it is important to have irreversible, destructive consequences primarily in the environment. It is the "extremely" dangerous quality or the state of the environment that should lead to loss among the objects of nature (animals, trees, water, etc.), material (financial) loss, and also create a threat to the health and life of people or entail human casualties. The same can be said for natural emergencies. If, as a result of a devastating earthquake, the population suffered and damage to citizens and the state, and its environmental consequences are not visible, then the emerged circumstance can hardly be declared an emergency environmental situation.

Proceeding from this, it should be noted that, in our opinion, it is difficult to call an emergency environmental situation that unfavorable state of the environment, which was not formed as a result of specific accidents or disasters, but in the process of prolonged anthropogenic impact. Based on this basic sign of environmental emergencies, it is difficult to agree with its concept given in the Environmental Encyclopedic Dictionary (2001).

Thus, according to the authors of this dictionary: "The main reason for the current environmental emergency was the development of the national economy, and primarily industry, without taking into account environmental requirements, the lack of an integrated approach to addressing environmental issues and the rational use of natural resources, the residual principle of financing environmental protection activities. Concentration of environmentally hazardous production in certain cities of the Russian Federation caused extreme pollution of atmospheric air, surface and groundwater[31]. "It also contains a vague concept of a zone of an emergency ecological situation, which as a special status should be given "only to territories whose state of the environment meets the criteria for assessing the ecological situation in the territory"[32].

Thus, when it comes to environmental emergencies, it is necessary to bear in mind the existence of an "emergency event" that led, first of all, to "extraordinary" environmental consequences, which subsequently threatened the health and life of people, society and the state, or entailed are human victims.

One of the important methodological preconditions for the political and legal discourse of state environmental policy in emergency environmental situations is the conceptual explication of the theoretical and methodological foundations of the "emergency situation" phenomenon. In the course of the analysis, the following conclusions were obtained on the basis of the political-method of content analysis:

1. The political component of state environmental policy requires clarification of the categorical apparatus of legislation at the levels of national and intergovernmental ecological policies for the prevention of environmental emergencies, which is a condition for uniting efforts to prevent them. Systemic and unified comprehension of political aspects, scientific political and legal discourse is a condition for the effectiveness of state policy on ecology.

2. Conceptually, there is no clear logical subordination between the concepts of "ecologically unfavorable territories", "ecological crisis", "ecological disaster", "emergency ecological situation", "ecological disaster zone", which prevents a common understanding of the main apparatus of state environmental policy.

3. The criteria of such categories as "ecological disaster zone", "emergency environmental situation", etc. are poorly developed and unspecified, for example, the Law of the Russian Federation "On Environmental Protection" (2002) contains only one article on organizational and legal issues forms of emergency. Unlike the Russian law, the Uzbek law deals with two "environmental" organizational and legal forms of an emergency situation. Here, both the "emergency zone" and the "disaster zone" are called environmental. And the Russian law does not call the "emergency zone" ecological. Such a contradiction in the understanding of the phenomenon served, in our view, the reason for a different interpretation of the political and legal forms of activity in the context of environmental emergencies.

References

1. For more details, see: Zhavoronkova, N. Ekologo-legal problems of ensuring safety in emergency situations of natural and man-made character. -M.: "Jurisprudence", 2007. p.78; Matuzov N.I., Malko A.V. Theory of Government and Rights. Uchebnik.- M.: Publishing house BUSINESS. 2014. P.61; Kholmuminov Zh.T., Legal issues of ecology and environmental protection.: Monograph. Tashkent, TSUL, 2014. P.260.

2. Kholmuminov Zh.T. Scientific and theoretical analysis of legal problems of prevention and elimination of ecological threats. Monograph. Tashkent: TJUU, 2016. S. 344.

3. Collection of Legislations of the Russian Federation. 2002. № 2, art. 133.

4. Brinchuk M.M. Environmental Law (Environmental Law). Textbook. - M.: Jurist, 1998. P.600.

5. SND and the RF Armed Forces statements, 1992. № 10. Art. 457.

6. In the same place. Pp. 598-599.

7. Brinchuk M.M. Ecological right. - M.: Lawyers. 2004. P. 571-576.

8. Bogolyubov S.A. Zones of ecological disaster, emergency zones // Agrarian and land law. 2009. № 11. P.63.
9. Kuksanov V.F., Glukhovskaya M.Yu. Emergency situations and zones of ecological disaster: Proc. allowance. Orenburg. 2008. P.111.
10. Collection of Legislation of the Russian Federation. 2002. № 2, art. 133.
11. Kasprova Yu.A. Ecologically unfavorable territories: problems of legal definition. - Collection, Proceedings of the Institute of State and Law of the Russian Academy of Sciences. Articles of graduate students and trainees of the Institute of State and Law of the Russian Academy of Sciences. 2012. № 2. With. 120.
12. Gorbachev AN Some problems of improving legislation on zones of ecological well-being. // State and Law. № 2. P.48.
13. CL RF. 2002. № 2. Art. 133.
14. Statements of the Supreme Council of the Republic of Uzbekistan. 1993. № 1. Art. 38.
15. Collection of Legislations of the Russian Federation. 1994. № 35. Art. 3648.
16. Scientific and practical Collection of Legislation of the Russian Federation. 2002. № 2, art. 133. CL RF. 1994. № 35. Art. 3648. Commentary to the Federal Law of 10 January 2002 No. 7-FZ "On Environmental Protection". Ed. A.Anisimova - M.: The business yard. 2010. P.425.
17. Statements of the Supreme Council of the Republic of Uzbekistan. 1993. № 1. Art. 38.
18. Dubovik O.L. Ecological right. Textbook. 3-ed.-M.: District, 2010. P.582; Kasprova Yu.A. Ecologically unfavorable territories: problems of legal definition. - Collection, Proceedings of the Institute of State and Law of the Russian Academy of Sciences. Articles of graduate students and trainees of the Institute of State and Law of the Russian Academy of Sciences. 2012. № 2. P. 114 - 123.
19. Zhavoronkova N.G. Ecological and legal problems of ensuring safety in emergency situations of natural and technogenic features. - M.: Jurisprudence. 2007. Art.8.
20. Statements of the Supreme Council of the Republic of Uzbekistan. 1993. № 1. Art. 38.
21. Kasprova Yu.A. Ecologically unfavorable territories: problems of legal definition. / Collection, Proceedings of the Institute of State and Law of the Russian Academy of Sciences. Articles of graduate students and trainees of the Institute of State and Law of the Russian Academy of Sciences. 2012. № 2. P.120.
22. In the same place.
23. Zhochkina I.N. Ecologically unfavorable territories: issues of thermology and legal regime. // Materials of the round table. Legal support of ecological safety in the territories of the Russian Federation. Res. Ed. V.V. Nikishin, I.N.Zochkina. - M., 2010. P. 89.
24. Gorbachev A.N. Legal regulation in zones of ecological trouble. - M., 2000.
25. Juraev Yu.A. Legal protection of state monuments of nature. - Tashkent, 1989. P.14.
26. Kholmuminov Zh.T. Some legal issues ensuring environmental safety and environmental protection in the Republic of Uzbekistan.// Law and Life, 2015 ,№ 7. Pp. 200-212.
27. Krasnova I.O. Zone of ecological disaster: the ways of forming a new legal category in foreign law.// State and law.1994.N8.
28. In contrast to the Law of the Russian Federation, the Law of the Republic of Uzbekistan "On Industrial Safety of Hazardous Production Facilities" provides for the concept of "incident" at hazardous industrial facilities, violation of the requirements contained in legislative acts, as well as regulatory technical documents in the field of industrial safety. "
29. Oliy Majlis's Chambers statements of the Republic of Uzbekistan, 2006, No. 9, art. 49.
30. Brinchuk M.M. Ecological right. Textbook. M.: Jurist., 2004. C. 564-565.
31. Ecology. The legal ecological dictionary. - M., "Norm". 2001. P. 405.
32. In the same place. P.407.