

## Why Is the Law Bad and Why Doesn't It Protect National Parks?

Valeriy Krylov,  
Forestry specialist,  
Almaty, Kazakhstan

Sergey Kuratov,  
Ecological Society Green Salvation,  
Almaty, Kazakhstan

*Support of ecological balance by organization of specially protected territories of various types and seportology<sup>1</sup> as a science, which researches and optimizes these processes, are turning into socially and economically significant tool of survival of the humanity.*

*—N.Reymers, Soviet zoologist, ecologist,  
one of the pioneers in creation  
of reserved natural areas in the USSR*

Let us begin by noting that our country which announced a transition to the “green economy,” has neither environmental policy, nor biological diversity preservation policy, nor rational utilization of water resources policy, nor tourism development policy. But it has unlimited ambitions.

At this, the environmental legislation does not contain clear and strict legal guidelines, and it is poorly observed. Executive authorities give in to “influential” nature-exploiting based businesses; courts worship the executive authorities. As a result, the natural environment is significantly polluted and deteriorated.

Primitive market fundamentalists predict invasion of millions of tourists, which come to our cities and towns bringing desired billions in profits. The market economy will blossom; “Kazakhstan dream” will come true. Alas, the devisers of the projects forget that market must be, first of all, based on clear laws, which are not only written, but also observed.

In our country, the word “law” is not favoured; the phrase “observance of laws” is despised. Mentality is on the first place. And if the mentality contradicts the law, then the law is either not observed, or it is changed. Frequency of changes of laws is in direct proportion with the speed of mental transformations of “influential” natural-resources based business owners, and in reverse

proportion with the amount of profits. If profits decrease, expect changes which shall compensate the loss!

The law “About Specially Protected Natural Territories” (hereafter—SPNT) is not an exception. It is an annoying obstacle on the way of commercial development of the last untouched natural resources: mountain forests, river valleys, lake shores, valuable animal and plant species.

Since the law cannot be fully ignored yet, a method of introducing amendments into the existing legislation is used. For the ten years of its existence, the law about SPNT was amended 16 times! In June 2016, another draft law “About Introduction of Amendments to Some Legal Acts of the Republic of Kazakhstan Regarding Flora and Fauna” was submitted to the Majilis of the Parliament of the Republic of Kazakhstan. Purpose of the project is to further “improve” the legislation, including the law “About Specially Protected Natural Territories.” And in this case, the classic question: “Who is benefitting from that?” has an absolutely clear answer. Those, who receive profits from developing (read destruction) of the untouched pieces of nature left.

### **Who Does the Natural Parks Belong to?**

As you may know, any activity requires land. And who does it belong to in national parks? At first, the question seems to be absurd. The law clearly indicates that “the lands of specially protected natural territories, and also land plots of other categories used for sites of the state nature reserve fund, are the state property and not subjected to alienation.”<sup>2</sup> Further it is emphasized that “requisitioning of lands of specially protected natural territories is not allowed.” Nature reserves and national parks are SPNT of the state level,<sup>3</sup> they belong to the government<sup>4</sup> and their management is assigned to the Forestry and Wildlife Committee (hereafter—Committee).<sup>5</sup>

But this is only at first glance! In the paragraph 2, Article 23, it is said that “transferring lands of specially protected natural territories (into other categories of lands—Editor’s note) is not permitted, in the exception of cases when transferring into lands of reserve for construction and operation of tourisms facilities...” and other. In other words, parts of a national park can be transferred from the most valuable category into less valuable lands which do not even have an owner.<sup>6</sup> And since there is no owner, they can be privatized by a decision of the local executive organs! But this contradicts to another article of the law about SPNT, according to which “transferring specially protected natural territories from the category of the ‘state level’ into the category of the ‘local level’ is not permitted.”<sup>7</sup>

This is a great illustration to the well-known aphorism: “If it is prohibited, but you really want to, then you can!” Although, the law makes a stipulation. Not

all parts can be transferred, but only those with established limited economic activity order.<sup>8</sup> But this will be discussed below.

So, who is the owner of the lands in national parks?

### **Leasehold Privatization**

The simplest form of privatization of lands of national parks is lease. Although, specialists of the Committee can swear on the Environmental Code that lease is not allowed by the law of SPNT, and bring an “iron” argument: “You do not understand anything!” Indeed, there is not a term “lease” in the legislation. More precisely, there was one but after another “improvement” of the law in 2012, it was replaced by an expression short-term and long term “utilization.”<sup>9</sup>

In order to clarify this question, let us take a look at the Land Code. In the paragraphs 1 and 2 of the Article 35, it is said: “1. A land plot can be provided to citizens and legal persons on the basis of temporarily fee-based land use (lease) or on the basis of temporarily land use free of charge. 2...Right of temporarily fee-based land use (lease) can be short-term (under 5 years) and long-term (5 to 49 years).” So, fee-based utilization is, indeed, called lease. Therefore, the awkward replacement of the term “lease” by “utilization” in the law about SPNT does not change the essence of a transaction.

Officially, letting lands into lease-utilization is taking place for organization of tourism and recreational activity by natural and legal persons, as long as they have a license on tour-operation activity, for example, for 49 years.<sup>10</sup> In this case, they use a method known from the times of Hodja Nasreddin. In 49 years, either the lands of the park will be totally plundered, or the laws will be changed. And while the lease is active, the lease holder is a factual private owner!

### **Monuments of Palatial Architecture in National Parks**

Of course, the lands are leased not to admire flowers and butterflies. Lease holders behave like “invaders.” National parks are getting cluttered with fences, dumpsites, parking lots, shish kebab houses... Palaces and mansions are growing like mushrooms. Automatically, a question arises: is it possible that the lease holders like tourists so much that they construct these “masterpieces” of palatial architecture only to win customers from their competitors?

At a closer look, it becomes obvious that there is nothing to do with tourists here. The palaces are built for private purposes. Seems like these lease holders are the ones who initiated the amendments into the law about SPNT which allowed lease and construction in national parks. For an official excuse of the “palatial movement,” its founder-fathers introduced into the law a special Article 46-1 “Construction Development on the Lands of State National Natural Parks

Given for Use for Tourism and Recreational Activity.” The article was filled with legal fog, in order to cover blunt greedy interests of the developers with a veil of lawfulness and public benefit. Dry legal language states that construction on sites of national parks is planned to be performed on the basis of a permit issued by an authorized organ (what a sinecure!) and project documentation developed in accordance with a design agreed with the authority.

After expiration of a lease period, it can be renewed. Natural and legal persons are responsible for ensuring integrity of the sites of the state natural reserve fund and for protection of the environment.

And the last paragraph of the Article 46-1 sounds almost like a motto of the Great French Revolution: “Dismantle and removal of constructed buildings from the land plots (in case, if a lease period is over and it was not renewed—Editor’s note) must be performed by natural and legal persons.” Peace to parks, war to palaces! How will this requirement of the law be enforced? After all, the palaces are built not to be demolished. This is another legal obscurity.

Situation is also worsened by the fact that due to a low-quality construction, some “palaces” are falling apart by themselves, “adorning” national parks with far from picturesque ruins. Their creators—land tenants—are not in a hurry to dismantle and remove the ruins. Nobody rushes to ensure integrity of sites of the state natural reserve fund and protect the environment. They are, probably, waiting for expiration of the 49-year period!

### **Limited Economic Activity with Unlimited Consequences**

Another invention of our law makers is a term “limited economic activity” on the territories of national parks which is explained in the Article 47 of the law about SPNT. Certainly, servicing tourists and performing of nature protection activities is already considered to be economic activity, and it is necessary. But let us take a closer look at the peculiarities of understanding of this term by the authors of the law.

A lot and a lot is allowed within the frames of the limited economic activity! Incidental forest utilization, limited livestock grazing (200, 1000, 10000 heads?), maral<sup>11</sup> raising, hay stocking, amateur picking of mushrooms, fruits and berries, performing sanitary forest cuttings, maintenance cuttings (at the exception of passage cuttings), processing the lumber, nomadic bee-keeping using mobile beehives. Additionally, construction of water pipelines, hydro power stations, cable roads, electric power lines (including high voltage lines), parking lots, and road barriers. A large number of “freedoms” brings large number of violations. Construction in reserved areas or national parks, construction on river banks in a way that visitors are unable to approach the water for kilometres, auto races along mountain river beds, private helicopter rides over the Almaty reserve, hard-rock rumbling in the Valley of Castles in Charyn Canyon...

As of 2012, 51.9% of lands of the Ile-Alatau National Park were re-zoned for limited economic activity<sup>12</sup> and can be leased out. It feels like it should be renamed into a zone of unlimited economic activity. In other words, more than a half of the territory of the national park can be lost for the overwhelming majority of the wild animals. Here you have the limited economic activity! Are things better in other national parks?

### **Conventions that We Trample on!**

International agreements are not favoured in our country, as well as the national legislation. Often, one can hear officials say: “Why do you keep talking about agreements and conventions?” In the first years of independence, the conventions were signed, probably, without a thought that the international obligations will have to be complied with, and not only provide a chance to travel abroad with missions.

Paragraph 4 of the Article 2 of the law about SPNT stipulates that “if an international agreement ratified by the Republic of Kazakhstan, establishes rules that are different from the ones contained in the present law, than the rules of the international agreement are applied.” But that is the extent of the “application” of the international law, despite of the fact, that its priority is announced by the Constitution of the Republic of Kazakhstan (Article 4, paragraph 3), Environmental Code (Article 2, paragraph 2), Forestry Code (Article 1, paragraph 3), Civil Procedural Code (Article 2, paragraph 3), and other laws.

Which requirements of the international law are missing in the law about SPNT? It does not determine at all the status of SPNT included in the UNESCO World Heritage List, List of Wetlands of International Importance, and other territories subjected to management under the international agreements ratified by the Republic of Kazakhstan.<sup>13</sup> That means that all of the above mentioned metamorphoses with the land of national parks can happen on territories of SPNT which are included, for example, in the World Heritage List. Why not to lease for 49 years a piece of a national park, included into the List, and open a restaurant with a poetical name “World Heritage?” Sounds grand!

In the Ile-Alatau National Park, included in the Tentative List of sites of the Republic of Kazakhstan which are to be nominated into the World Heritage List,<sup>14</sup> land lease is already a norm! Will it create an insurmountable obstacle for including the park into the World Heritage List? In other words, our “influential” developers of natural resources prefer receiving profits right now and right here, but not to invest into some mythical site of the world heritage.

In the law about SPNT, the home-country legal experience is not taken into account either. The law “About Protection and Utilization of Sites of Historical and Cultural Heritage” in the country is in effect since 1992!<sup>15</sup> With a purpose

of an effective accounting and protection, monuments of history and culture are divided into three categories: international, country-wide, and local importance. Monuments of international importance particularly contain sites included into the UNESCO List of World Cultural and Natural Heritage. Why wasn't this experience used during more than 20 years?!

In the law about SPNT, the provisions of the Convention on Biological Diversity are not implemented either. In particular, no attention is given to the fact that “the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystems **and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings.**”<sup>16</sup> These gaps in the law create favourable conditions for some amazing initiatives by our “influential” developers of natural resources. For example, somebody liked a piece of land where “red book” plants grow. They suggest to transplant the plants into “reservations.” And it doesn't matter that natural ecological systems will be destroyed along the way. There will always be some scientists who are ready to give a “scientific” justification of the blunt violation of the law.

About preservation of habitats of “red book” plants is only mentioned in the Article 339 of the Criminal Code, which states: “Illegal procuring, acquiring, keeping, selling, importing, exporting, shipping, transporting, or destroying of rare and threatened species of plants and animals, their parts and derivatives, ... as well as **destruction of their habitats** are punished.” At least, here it was not forgotten!

But what a rich soil is created by the above listed black holes in the law for various speculations on the topic of development of ecological tourism!

### **Life Saving “Energy of Inaction”**

Why is it that at this legal anarchy, the national parks haven't disappeared yet in Kazakhstan? Because beaten up roads, destroyed bridges, lack of maps and on-site signs, illegal appropriation of lands, omnipresent road barriers, paradoxically, sometimes can be helpful.

Experience of residents of the town of Glupov<sup>17</sup> comes to mind. Indeed, they were the first ones to apply the “energy of inaction.” In our case, the “energy of action” of “influential” developers of natural resources “was opposed with a great resourcefulness to the energy of inaction” of officials. The energy of action wins for now, because developers of natural resources learnt to “tame” officials.

But the tendency is growing. Some mountain gorges, where massive tourism used to blossom in the soviet times, nowadays are totally forgotten and abandoned. According to a competent opinion of scientists, even snow leopards returned there.

### **What Is Necessary to Be Changed in the Law?**

“Effective protection of the environment requires clear and strict legal regulations.”<sup>18</sup> This written truth disliked by our “influential” developers of

natural resources and corrupted officials, gives an exhaustive response to the raised question. Guided by logic of a pig under an oak,<sup>19</sup> they only think about what they want to eat. They are not interested about ecological, socio-economic, scientific, and cultural benefits received by the society from having untouched natural territories.

Hundreds of amendments were introduced into the law about SPNT only to gain instant profits. Will such a law work at all? They are not worried about that either, it is not important to them. What is important to them is that their interests are met.

More numerous confirmations of discrepancies between the law about SPNT and the requirements of the international and national legislation can be described. In its current content, the law about SPNT is more of a monument to lawlessness, destruction of SPNT and the state system of nature protection.

In order to really improve the situation, significant changes are needed to be introduced into the legislation with the account of requirements of the international law, and not just a legal make-up.

It is necessary to develop a state policy in the area of protection and development of SPNT, in accordance with the nature protection conventions. Give it a status of a regulatory legal act which is obligatory for implementation by all state organs and other natural and legal persons.

Introduce into the law provisions about a special status of SPNT and other territories, where the international agreements ratified by the Republic of Kazakhstan are applicable. For example, sites included into the UNESCO World Heritage List or the List of Wetlands of International Importance.

Develop a provision about protection of ecosystems, habitats, and conservation of viable populations of species in their natural surroundings.

It is necessary to remove all external landowners outside of the borders of SPNT of the state level, ban land lease<sup>20</sup>.

And the most important. The meaning “national parks” itself implies not only that they belong to the nation, but also that wider public has a right and must participate in their creation, management, protection, and utilization for well-being of the presently living and future generations, and not for profits of a small crowd of “influential” developers of natural resources.

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1 Seportology—scientific discipline which studies patterns and methods of maintaining ecological balance in converted and conditionally-natural environment.

2 Law “About Specially Protected Natural Territories” (with amendments as of June 15, 2017), Article 23, paragraph 1.

3 Same as above, Article 14, paragraph 1.

4 Same as above, Article 7, paragraph 2. “Competence of the Government of the Republic of Kazakhstan include:...

2) right of ownership, utilization, and disposition of specially protected natural territories and

- objects of the state nature reserves fund of the country-wide importance.”
- 5 Statements about the Committee of Forestry and Wildlife of the Ministry of Agriculture of the Republic of Kazakhstan. Adopted by a Decree of the Minister of Agriculture of the Republic of Kazakhstan dated on June 5, 2015, No. 18-5/520. Article 2, paragraph 14, subparagraph 40. The Committee’s “role is to manage specially protected natural territories that are under its jurisdiction; assure their safeguarding, protection, restoration, and also scientific research.”
  - 6 Land Code of the Republic of Kazakhstan (with amendments as of July 11, 2017), Article 137, paragraph 1: “Lands of reserve are all lands that are not owned or used, and that are under control of district executive organs.”
  - 7 Law “About Specially Protected Natural Territories,” subparagraph 2, paragraph 6, Article 14.
  - 8 Same as above, paragraph 2, Article 23.
  - 9 Same as above, Article 46.
  - 10 Same as above.
  - 11 Maral (*Cervus elaphus maral*) is one of the subspecies of red deer.
  - 12 Draft. Correction of Feasibility Study of the Ile-Alatau State National Natural Park in the Part of Functional Zoning and Infrastructure Development Master Plan.—Almaty, 2013, p.8. “In accordance with the above named project of 2012, the Ile-Alatau SNNP with a total area of 199,673.5 hectares, has the following functional zones:
    - natural reserve zone (protection procedures of a reserve)—57,786 hectares (28.94%);
    - zone of ecological stabilization (protection procedures of a reserve with some admission of scientific activity and recreation)—23,280 hectares (11.7%);
    - zone of tourism and recreational activity (protection procedures of a protected area)—14,991 hectares (7.5%);
    - zone of limited economic activity (protection procedures of a protected area)—103,616.5 hectares (51.9%).
 Thus, protection procedures of a reserve currently cover 80,601.5 hectares or 40.4% of the total area of the park.”
  - 13 Law “About Specially Protected Natural Territories,” Article 14.
  - 14 World Heritage Convention, <http://whc.unesco.org/en/tentativelists/1681>, (last visited July 25, 2017).
  - 15 Law of the Republic of Kazakhstan “About Protection and Utilization of Sites of Historical and Cultural Heritage” (with amendments as of March 29, 2016).
  - 16 Convention on Biological Diversity, <https://www.cbd.int/convention/text/default.shtml>. Provisions of the Article 8 “In-situ Conservation” are not accounted either. “Each Contracting Party shall, as far as possible and as appropriate:
    - ...
    - (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;...
    - (f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies.”
  - 17 Saltykov-Shchedrin M.E. History of a Town.
  - 18 John Galbraith. Economics and the Public Purpose.—Moscow, 1979, p.361.
  - 19 Krylov I.A. Pig under an Oak (fable).
  - 20 To see the full text of comments to the law “About Specially Protected Natural Territories,” please, visit, <http://esgrs.org/wp-content/uploads/2016/12/2016.10.20-%D0%9F%D1%80%D0%B5%D0%B4%D0%BB%D0%BE%D0%B6%D0%B5%D0%BD%D0%B8%D1%8F-%D0%BF%D0%BE-%D0%B8%D0%B7%D0%BC%D0%B5%D0%BD%D0%B5%D0%BD%D0%B8%D1%8E-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B0-%D0%BE%D0%B1-%D0%9E%D0%9E%D0%9F%D0%A2-004-%D1%81-%D0%BF%D1%80%D0%B0%D0%B2%D0%BA.pdf>.