

ABSTRACT

General description of the thesis: The thesis is dedicated to the problems of the legal support of phytosanitary security in the Republic of Kazakhstan and the foreign countries. The thesis studies theoretical problems, the state-legal mechanism for ensuring phytosanitary security in the Republic of Kazakhstan, the experience of phytosanitary security of the USA, Canada, the states of the European Union, as well as our country within the framework of the WTO and the EAEU.

Research rationale: The Address of the President, Kassym-Jomart Tokayev to the Nation of the Republic of Kazakhstan dated September 02, 2019 states that: "A competitive economy cannot exist without efficient agriculture.... Among our main goals shall be the national staples self-sufficiency; a steady increase in the incomes of millions of people living in the rural areas; an increase of labor productivity by two and a half times; doubling the export of agricultural products". The message sets the goal not only to develop agriculture and provide the population with domestic food products at a sufficient level, but also to increase the export. For sufficient production of domestic food products, the phytosanitary condition of the country's territory must be at a sufficient level. According to the Ministry of Agriculture, in 2019 the area of distribution of the quarantine objects was 75.2 thousand hectares, the area of distribution of locust pests was 567.691 thousand hectares.

The national program for the development of the agro-industrial complex of the Republic of Kazakhstan for 2017-2021 specifies the following issues in the field of phytosanitary security such as: lack of compliance control over technical standards for plant protection agents, a low level of phytosanitary literacy of agricultural producers, an increased risk of the spread of quarantine objects within the framework of the EAEU, and WTO integration, a lack of material equipment, low participation in the activities of international organizations in the framework of international cooperation. These circumstances indicate the significance of the issues related to legal support of ensuring phytosanitary security that are at the same time very important and challenging in social security and healthcare system as well.

The creation of effective legal instruments to prevent the spread of plant epiphytotics indicate the relevance of the thesis theme considering that since March 11, 2020 due to the spread of coronavirus infection there has been a threat of harm to human health, the welfare of animals and plants, the entire biosafety system in the world. In the context of the spread of the pandemic, the phytosanitary legislation of many countries was amended and supplemented with provisions related to the automatic management of all processes, especially the procedures for checking and accepting a phytosanitary certificate through the world's Internet hubs.

According to the UN, about forty percent of agricultural plants die from pests and diseases of plants annually. These data indicate that the spread of plant pests causes direct damage to the economic and food security of the country. Kazakhstan's membership in the WTO and the EAEU has led to an increase in international trade. In this regard, it is necessary to develop forms and methods of international cooperation in the field of ensuring phytosanitary safety, prevent the spread of plant diseases and pests in international trade, ensure compliance with phytosanitary measures approved by international standards, their harmonization in accordance with national legislation, which requires theoretical research and legal justification.

Due to climate change and global warming, the number of plant pests is growing from year to year, as high temperatures create a favorable environment for pests to breed. This issue caught the attention of the world community, and in December 2018, the UN General Assembly declared 2020 as the International Year of Plant Health. This year 2020 is a unique opportunity to raise awareness that plant health can help eliminate hunger, reduce poverty, protect the environment and accelerate economic development.

At another point, Kazakhstan's membership in the WTO and the EAEU has led to an increase in international trade over the past decade. It is important to comply with phytosanitary measures approved by international standards, and to harmonize that measures with national legislation in order to prevent an increase in the spread of plant diseases and pests in the international trade.

The Republic of Kazakhstan is not a member yet of the hub for the exchange of phytosanitary certificates "e-Phyto" between countries within the framework of the implementation of the International Plant Protection Convention that was signed by ninety countries of the world. In his last Address, the President of Kazakhstan Mr. Tokayev K.K. raised the issue of digitalization of the customs sphere, which will solve the issues of joining this hub, and increase of the agricultural products export.

The relevance of the chosen theme of the thesis is justified by the need to study the theoretical problems of legal support of phytosanitary safety in view of the fact that agricultural business in the field of plants protection from the spread of diseases and pests has its own legal regulation. Also, it should be noted that the Kazakh scientists in the field of agricultural law made the emphasis on the protection of the environment from agrochemicals and pesticides and mainly and did not perform the theoretical analysis of the issues related to the phytosanitary legislation development. These circumstances influenced the author in choosing the topic of the thesis related to the phytosanitary security issues. Within the context of the development law-governed state, the country needs effective mechanisms of legal regulation of the agrarian sector that meet modern requirements. Phytosanitary security relation issues are in urgent need of legal resolution, and require appropriate legal amendments that shall address legal shortcomings. The above mentioned emphasizes the scientific and practical

significance of the problem under study, the lack of comprehensive scientific developments, which determines the relevance of the research topic of the dissertation, its connection with general scientific and national programs.

Degree of the scientific development of the issue. The legal support issues of phytosanitary security were not the subject of any dissertation thesis. In Soviet times, I.A. Rotar's dissertation thesis "Legal protection of agricultural crops from pests, diseases and weeds" reflected the problems of legal protection of the agricultural plants from diseases, pests and weeds. The work raised issues of agrarian legislation and responsibility for violation of the rules for protecting agricultural plants from diseases, pests and weeds in Soviet times. The work of I.A. Rotar is the first legal study of the problems of protecting agricultural plants. Among the studies closely related to the content of the dissertation thesis are the works of the following scientists who have contributed to it: L.K. Erkinbayeva who raised questions related to the formation and development of agrarian law in domestic legal science; E.Sh. Dusipov, I.V. Amirkhanova, B.A. Zhumadilov discussed the problems of agricultural entrepreneurship; A.K. Dzhangabulova contributed to the issues of agricultural cooperation; Zh. B. Akshataeva – to the issues of agricultural production insurance; M.Zh. Abdraimova, S.D. Bekisheva, A.E. Zhatkanbaeva discussed the problems of environmental and information security. A.T. Ozenbaeva covered the issues related to the legal provision of food security.

In addition, the issues of ensuring sanitary security are highlighted in the dissertation works of A.K. Kurmanova, the problems of ensuring veterinary security are analyzed by B. Kalymbek.

Ozenbaeva A.T. in her dissertation thesis "Legal support of food security (comparative analysis of legislation and practice of the Republic of Kazakhstan and foreign states)" investigated some issues of legal protection of plants. E.S.Ayanbaev in his dissertation thesis "The pesticide regime in modern international law" analyzed the WTO agreement as the main document in the field of food quality control in international trade related to the application of sanitary and phytosanitary measures. E.B. Baytanaev analyzed the issues of legal protection of the environment from agrochemicals in his thesis among Kazakhstani scientists. In her Ph.D. thesis "Legal bases for the protection, education and use of non-forest flora in the Republic of Kazakhstan" G.A. Stamkulova investigated the general legal regime for plant protection.

The Ukrainian scientist V.V. Kurzova in her Ph.D. thesis "Ecological and legal regulation of plant quarantine", along with the theoretical and legal foundations of plant quarantine and mechanisms of environmental legal regulation also studies the issues of improving the legal support for the environmental security of the introduction and acclimatization of plants, and improving a quarantine regime for plants as one of the types of legal regimes for emergency environmental situations.

The domestic scientists such as G.T. Aigarinova, Zh.B. Akshataeva investigated certain aspects of ensuring food security and phytosanitary security, including in the field of crop production.

The works of Russian scientists F. Karlik, I. Grichanov reflected the issues of phytosanitary terminology and security, B.A. Voronin published scientific articles on the problems of plant quarantine. The Turkish scientist Mustafa Ozen in his work "Food Law" analyzes a special section "Plant health (phytosanitary)". Foreign researchers, in particular J. Scott, B.A. Silverglade, S.J.Henson, R.J. Loader, A. Swinbank, M. Bredahl, N. Lux reviews the WTO agreement on Sanitary and Phytosanitary Measures among phytosanitary legislation as an object of research.

Scope of the Study is public relations in the field of phytosanitary security in the Republic of Kazakhstan.

Subject of the Study is the legal mechanism for ensuring phytosanitary security in modern conditions.

Objective of the Study is a comprehensive study of the legal problems of ensuring phytosanitary security in the Republic of Kazakhstan, including those in cases of emergency.

The area mentioned above can be studied and justified by addressing the tasks, as follows:

- Analyze the legal nature of phytosanitary security, give the author's definition of this concept;
- Identify the principles of legal support for phytosanitary security;
- Determine the place of norms of legal support of phytosanitary security in the legal system;
- Examine the concept and content of the state-legal mechanism for ensuring phytosanitary security in the Republic of Kazakhstan;
- Analyze the legal regime of plant protection products;
- Reveal the content, identify elements and directions, as well as propose ways to improve international cooperation in the field of legal support for phytosanitary security of the Republic of Kazakhstan;
- Develop practical recommendations for improving legislation in the field of phytosanitary security.

Methodological Background. Scientific methods have been widely used in the thesis such as: dialectical analysis, synthesis, comparative legal analysis, historical, cognitive, general scientific research. The historical legal method was applied during analysis of the stages of formation and development of Kazakhstani legislation in the field of phytosanitary security, the comparative method - in the study of international experience in the field of legal support of phytosanitary security, the method of analysis and synthesis was used in the definition and general characteristics of phytosanitary security.

Theoretical background. The theoretical problems of phytosanitary security are investigated from the standpoint of the theory of state and law based

on the works of V.N. Khropanyuk, N.I. Matuzov, A.V. Malko, G.S. Sapargaliev, A.S. Ibraeva, D.A. Bulgakova, from the position of environmental-legal and agrarian-legal science on the works of S.A. Bogolyubov, M.M. Brinchuk, G.E. Bystrov, M.I. Kozyr, I.A. Rotar, V. Kurzova, D. L. Baydeldinov, S. D. Bekisheva, L. K. Erkinbaeva, B. A. Zhetpisbaev, M. K. Zhusupbekova, G. A. Stamkulova, S. T. Kulteleev, G. T. Aigarinova, A. K. Dzhangabulova, Zh.B. Akshataeva, E.Baytanaev, B. Kalymbek, A.T. Ozenbaeva, E.S. Ayanbaev, etc. The author relied on special literature on agriculture, plant protection.

Legal framework of the study has been formed by The Constitution of the Republic of Kazakhstan, the Environmental Code of the Republic of Kazakhstan, the Land Code of the Republic of Kazakhstan, the Code “On Customs Regulation in the Republic of Kazakhstan”, the Forest Code of the Republic of Kazakhstan, the Laws of the Republic of Kazakhstan “On Plant Quarantine”, “On Plant Protection”, “On State Regulation of the Agroindustrial Complex and Rural Territories Development”, "On seed production", "On grain", Decrees of the President, Resolutions of the Government and other legal acts of foreign countries.

Scientific novelty of dissertation thesis is that it examines the issues of legal support of phytosanitary security in the Republic of Kazakhstan in the context of the development of integration processes within the framework of international cooperation, and specifics of environment protection and agricultural legal relations during the period of globalization and climate change and digitalization, as well as in the conditions of Kazakhstan's membership in the WTO and the EAEU. Legal protection of human life and health, ecology environmental system vegetal and animal world against plant pests and diseases and plant quarantine has not been the subject of special research in Kazakhstani legal science yet.

Phytosanitary security, as an integral part of national security, has not been studied as a legal phenomenon. In some works of the scientists, some of the legal issues of crop production, the WTO agreement on the use of sanitary phytosanitary measures in international trade, legal issues of environmental protection in agriculture from the use of agrochemicals have been partially studied.

The dissertation thesis is among the first ones which provides comparative analysis of the legal issues of phytosanitary safety between the Republic of Kazakhstan and foreign countries. It analyzes the legal nature of phytosanitary safety, gives the author's concept of phytosanitary safety. The author reviews the stages of formation and development of phytosanitary safety legislation at the international and national level. Also, the author determines the place of phytosanitary safety legal norms in the legal system and provides the analysis of the phytosanitary safety principles. Along with the above, the state-legal mechanism for ensuring phytosanitary safety in the Republic of Kazakhstan was studied.

The author provides a definition for the concept of plant protection agents, and gives legal regulation recommendations for circulation of plant protection agents, and reduction of its use impact on human life and health, the welfare of animals and plants.

The author studied experience and mechanisms of international cooperation in the field of ensuring phytosanitary safety and provided recommendations for its transformation in the Republic of Kazakhstan based on the best practices.

Along with this, attention was focused on the harmonization of international standards within the framework of the WTO and the EAEU, the creation of legal instruments for phytosanitary security in cases of the spread in emergency situations, including plant epiphytotics. The author provided practical recommendations for bringing national legislation in line with international standards, and creating legal instruments for phytosanitary safety in cases of the spread of emergency situations, including plant epiphytotics.

The following principles are submitted for presentation:

1. Phytosanitary security is a security of human life and health, environment, fauna and flora from harmful organisms protection (plant pests, plant diseases and weeds) aimed at ensuring a favorable phytosanitary environment. Phytosanitary security is a part of the national security of our state, and is closely related to environmental, sanitary, food, veterinary types of security. The concepts of phytosanitary security and protection of plants from pests are closely interconnected, but at the same time they should be distinguished. Phytosanitary security reflects statics, and represents the end result, and the concept of "protecting plants from harmful organisms" reflects the dynamics, that is, it is a set of measures.

2. The principles of legal support of phytosanitary security are a system of priorities in the field of protecting the territory of the Republic from the penetration, spread of harmful organisms (pests, plant diseases, etc.) secured in legislation. The following principles should be followed In the field of legal support of phytosanitary security,:

- the priority of human life and health in ensuring phytosanitary security;
- harmonization of economic and environmental interests in the field of phytosanitary security;
- ensuring the preservation of ecosystem environmental balance in protecting plants;
- the priority of biodiversity conservation in the analysis of pest risk;
- responsibility of public authorities, legal and physical entities in creating favorable phytosanitary climate.

3. Legal norms in the field of ensuring phytosanitary security create a complex and intersectoral legal institution of the agrarian and environmental law. On the one hand, within the framework of ensuring phytosanitary security, the issue of protecting the flora as a component of the environment and the basis for maintaining ecological balance from potential pests is considered, and on the

other hand, the legality of phytosanitary measures aimed at ensuring the security of food products of the country and a favorable phytosanitary climate is considered. The legal institution for ensuring phytosanitary security, along with the norms of environmental and agricultural law, includes norms of customs law (for example, a ban or restriction of the transportation, transportation and import into the Republic of Kazakhstan of regulated goods and products across the customs border of the Republic of Kazakhstan), administrative law (state phytosanitary control), norms of criminal law (for example, criminal liability for violation of the rules established to combat diseases and pests of plants, resulting in heavy consequences), as well as norms in the field of sanitary and epidemiological control (ensuring the sanitary and epidemiological well-being of the population), norms of forestry, land and other branches of law.

4. The state legal mechanism for ensuring phytosanitary security is a complex of organizational and legal, socio-economic, sanitary and epidemiological measures carried out by the state bodies and aimed at ensuring food security, a favorable phytosanitary environment, protecting human life and health, the environment, the animals, and flora from potentially harmful organisms. In order to effectively ensure phytosanitary security it is proposed to create a permanent coordinating body for sanitary, veterinary and phytosanitary security based on such "three main priorities" as the preservation of human life and health, animal and plant health.

5. Plant protection agents are a system of means the circulation of which is carried out in accordance with the procedure established by law and that are used to protect the plant life from the negative effects of harmful organisms, to prevent penetration and spread, treatment and neutralization. The use of plant protection agents should be limited in order to preserve human health and life, to ensure environmental protection in agriculture. The use of plant protection agents should be carried out by persons who know the rules and technologies for safe use, of special knowledge and sufficient qualifications, therefore, it is proposed to introduce the term "phytosanitary business" into legal circulation.

6. International phytosanitary cooperation is a mechanism of joint activities of the countries in the field of legal protection of human life and health, the welfare of the animal and plant world, the environment from harmful organisms that can cause harm, and aimed at ensuring phytosanitary security carried out in organizational and contractual forms. In order to effectively implement international phytosanitary cooperation Kazakhstan is recommended join the e-Phyto hub of national organizations-members of the Plant Protection Convention, as a centralized system that facilitates the exchange of electronic phytosanitary certificates between countries, increasing the export potential of agricultural products, the international use of electronic document circulation, accelerating trade processes for plant products and a demand for clean products from pests in issuing phytosanitary certificates. Accession to E-Phyto hub allows to: conduct phytosanitary control over quarantine products transported across customs

borders; counterfeit phytosanitary certificates forgery or alternation; verify the certificate through the database; verify the phytosanitary certificates of another country for plant products imported into our country.

7. Relations in the field of phytosanitary security are governed by legal acts of various branches of legislation, including in the field of development of the agro-industrial complex, protection and quarantine of plants, seed production, customs regulation, specially protected areas, forest and land relations, etc. This creates theoretical and practical difficulties in the legal regulation of the issue. It requires to harmonize the national legislation with the requirements of international legislation in the context of modern international integration, the accession of Kazakhstan to the WTO and the EAEU, accession to the international Convention on Plant Protection and Quarantine. In this regard, it is necessary to systematize phytosanitary security legislation.

Theoretical and practical significance. The provisions of this study may be used in the field of lawmaking; when making managerial decisions of the Government, the Ministry of Agriculture, the central and local executive bodies for the protection and quarantine of plants of the Republic of Kazakhstan, in the practical activities of state control bodies; when giving classes of "Agrarian Law", "Environmental Law", "Business Law", "Customs Law" in the universities and other special legal educational institutions. The development of the thesis provide the basis for the educational discipline "Legal regulation of phytosanitary security in the Republic of Kazakhstan" which is included in the KazNU named after al-Farabi Master program "Environmental Law".

Evaluation of the research results. The main conclusions provided in the dissertation thesis were published in 12 scientific articles, including in 2 international peer-reviewed journals based on Scopus, in 5 scientific publications recommended by the Control Committee in Education and Science under the Ministry of Education and Science of the Republic of Kazakhstan, and in the proceedings of the international conferences.

The structure and size of the thesis. The dissertation thesis consists of an introduction, three sections, eleven subsections, a conclusion and a bibliographic list of the normative acts and literature used.