

Evolution of Border Zone Legal Regulation in the Kyrgyz Republic

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Abstract

This article reveals emergence specifics in the enterprise of categories in border areas in the Kyrgyz Republic and status as an independent legal category and legal aspects of the evolution regulation at the legislative level. The article analyzes specifics of the legal categories' nature on the territory, border, border territory, as well as the advantages and disadvantages of its legislation. The research purpose is to identify gaps in the existing regulatory framework and to develop the path in their improvement, identifying stages of legalization in the analysis of the formation and evolution of the development of territorial boundaries. The results of the article were determined by the issues in the establishment of the boundary territory and its specific features. Obtained research results can be used in government regulation research and educational procedures.

Keywords

Boundary, Territory, Boundary Territory, Decree, Law, Constitution, Regime, Special Status

1. Introduction

The radical adjustment of the political world map which began in the twentieth century and continued to this day, arises objective interests of scientists in various aspects of regional phenomenon, as well as in issues related to the content and purpose of border areas (Kurmanalieva & Crewett, 2019). The urgency of the problem has been exacerbated by a widening of the conflict zone and its

transition to neighboring countries, the general dependence on the deteriorating environmental situation in the world and the migration crisis in the region.

The border regions' specific location is often excluded from the large national infrastructure investment location, natural and anthropogenic barriers preventing cross-border integration (Bufon et al., 2014). The territory is defined as a limited part of the Earth's solid surface, characterized by defined area, geographic position and other characteristics (Bobushev, 2010). The region is seen as a government life material and legal phenomenon. The region is not only an economic or geographic category, i.e. it is impossible to equate the concept "region" and "territory", as the territorial component is essential for any region since it is a basis, and any region is a territorial component but one territorial component is not enough to call the territory as a region (Mezhevich, 2006). The fundamental significance of "region" has always attracted the attention of lawyers in the study of related phenomena and categories.

For modern Kyrgyzstan, the importance of the "border area" is very high, because it has a relatively conflicting perimeter, which includes very different areas in terms of natural, social and economic characteristics. The concept of "border area" is widely used in modern legislation. Regulation of relations within the border areas is provided by the Land Code (Kyrgyz Republic Land Code, 2020), the Law "On Local Self-Government" (Kyrgyz Republic Law, 2011) and the Law "On the State Border of the Kyrgyz Republic" (Kyrgyz Republic Law, 2019) according to which foreign citizens, stateless persons and foreign legal entities may not have the right to own land.

The main purpose of this study is to describe the evolution of the historical formation of the conceptual apparatus near the border by identifying its characteristic features.

Literature Review

However, due to the lack of consensus on the definition of this term, legal collisions arise: in most of the regulatory legal acts of the Kyrgyz Republic, the border area is defined as a border area along the government border, and in other acts, it is close to the border considered as a set of regions. Also, the law "On the Government Border of the Kyrgyz Republic" does not specify the definition of the border area, where the protection of the government border is associated with ensuring the individual vital interests in the society and the government within the border and there is no definition was given. The lack of a "border zone" definition for modern relations in the border zone is confirmed in practice.

Legal regulation issues related to relations in the border area, formation of conceptual apparatus based on our government, as in essence the government must be considered as a definite association, whose members are integrated into public powered structures and relations (Boshno, 2013). The border zone phenomena mean an integral of socio-political area that covers the border sphere or border space of contiguous peoples and their governments (Kolotusha, 2013).

In international practice, the understanding of the government border as a certain line, as the territory of an independent government (although the current understanding arose somewhat later, with the development of international law and cartography) appeared only in the X to XI centuries. The rules of movement through border crossings (the powers of border guards, the rights and obligations of citizens entering and leaving the country) are governed by legal traditions, canonical norms and oral orders of the head of state and his administration.

The border area remains heterogeneous (Beugelsdijk & Mudambi, 2013), with different conditions, depending on the nature of relations with neighboring countries and the situation inside the country. The main factor in the legal regulation of the border area is the introduction of regime restrictions (rules of entry and exit, business conduction, etc.), spatial boundaries (Kubin & Gardini, 2020) and special powers of border guards (inspection of documents and cargo, search, use of weapons, etc.) is the need to determine.

2. Research Methods

Theoretical and legal analysis in the context of the legal policy evolution in the border area of the Kyrgyz Republic contributes to development of studies relating to this category and explaining the essence with legal content of the definition “border area”. That is why such questions arise as research in this area, development of a conceptual apparatus, study of the content of the category “border area”. In this study, legal (public legal regulations on the legislative level), historical (historical law and events relation) method approach is manifested in the direction of scientific knowledge from the present to the past; comparative and systematic methods are based on obtaining new knowledge by comparing historical and legal sources (Shigal, 2013).

3. Results and Discussions

3.1. Rules Related to the Border Area

The issue of the border area of Kyrgyzstan began to be addressed only after the October Revolution. At the end of 1917, the period of “regional stabilization” came to an end and the so-called “political-territorial experiments” began. It should be noted that with the establishment of the Soviet power, the law in the field of border areas was made under the influence of former members of the Border Guard Corps, who were devoted to the protection of the state border.

Soviet Government 1918 Decree of the Council of People’s Commissars of the RSFSR “On the organization of border protection” of May 28 (Kyrgyz Republic Law, 2015: p. 331); February 15, 1921 “Instructions to the units of the All-Union Special Committee for the Protection of the Frontier of the RSFSR” (*Decrees of the Soviet Power, 1957: p. 432*), 1921. The first normative acts, such as the “Regulations on the protection of the borders of the RSFSR” of July 10 (*From the History of the Cheka Soldiers and the Border Guard 1917-1921, 1958: p. 173*)

(initial provision), were developed based on Russian acts. For example, the Decree “On the organization of border protection” (Skvortsova et al., 1973: p. 345) states that “the area from the borderline to the location of the first line outposts and seven kilometers from these outposts to the territory of the Republic is considered a borderline.” The formation of the Soviet Union predetermined the publication of the “Regulations on the Protection of the Borders of the USSR”, which was adopted in 1923. Approved by the Central Committee of the USSR on September 7 (*Decrees of Soviet Power, 1957-1997: p. 235*), it states the following: meter, 7, 5, 16 and 22 kilometer lanes and a 12-mile sea lane. Border guards shall be granted exclusive rights within the limits of these lanes, and certain restrictions shall be imposed on the population and ships provided for in this Regulation.”

Further, in connection with the aggravation of the international situation and the aggravation of the political situation in the country, which proclaimed “the building of a socialist society in the conditions of a capitalist siege”, the protective functions of the borders came to the fore. New laws, adopted in 1927, determined the duty of the border guards of the united government political administration and the Red Army units “to maintain revolutionary order within 22 kilometers from the border.” By the decree of the Central Committee of the CPSU (b) and the Council of People’s Commissars of the USSR dated February 1, 1938 “On the forbidden border” (*Decrees of the Soviet Power, 1957: pp. 29-37*), the “borderline” was determined along its entire length. The length of the state border of the USSR.

Then the political, military and socio-economic cataclysms, especially during the Great Patriotic War, called for the further legal regulation of relations in the border area.

The Law of the USSR “On the State Border of the USSR” adopted on November 24, 1982 (*Resolution of the Council of People’s Commissars of the Central Committee of the All-Union Communist Party of Bolshevik, 2009: p. 891*), defined the legal status of the border zone and the border strip. However, this first law “On the State Border of the USSR” did not cover the issue of border areas, although the complexity and severity of the problems in the border areas require a solution. Even with the ever-changing political leadership, the tense international situation, and growing economic difficulties within the country, the development and legal security of the Soviet Union’s border areas remained largely unaddressed. It should be noted that the USSR was not in a state of isolation near the border. Following the signing of the final document of the Council for Security and Co-operation in Europe at its meeting in Vienna on 15 January 1989, the 20 participating States granted each other the right to freedom of movement and residence within each country, as well as undertook to respect their freedom to return (*Concluding Document, 1989*).

To implement this document, the Council of Ministers of the USSR adopted a resolution on November 27, 1990, which removed or reduced the border area in various sections of the state border by 10 times. This resolution abolished re-

restrictions on the movement of permanent residents of the USSR in the border area.

The category “Border Area” was legally approved by the adoption of the Law of the Kyrgyz Republic “On the Government Border” on May 16, 2015 (*Kyrgyz Republic Law, 2019*). The Constitution of the Kyrgyz Republic, which is the beginning of the independent stage of development of the republic, does not specify the category of “border area”. The constitution also does not specify what the country’s territory will cover.

Analysis of the national legislation of the Kyrgyz Republic in the field of border areas allows us to define this category in several ways:

1) Border area is the territory in which the border guards perform duties and enjoy the rights determined by the legislation of the Kyrgyz Republic, regardless of the regime on it;

2) Border area is a territory within an administrative-territorial unit, the external borders of which are inclined towards the state border, which can define prohibited and protected borders following national interests and the norms of international law;

3) Border zone the territory or part of the territory of the administrative-territorial structure of commonwealth of independent states (CIS) countries, which approaches the government borders of these countries and is defined as such territory in accordance with their domestic legislation or international treaties in which they participate.

If in the first option the definition of the border area is considered only in terms of the possibility of using the border regime, in the second option it is proposed to consider the “border area” as an object of international cooperation near the border, which is simplified. The territory, being a mandatory attribute of the government, performs certain functions due to the need to regulate public relations, the definition of the relevant legal regime and legal guarantees. The border territory is a part of the country, the basis for organizing the activities of government and local authorities, as well as the place of their interaction with the relevant authorities of the border territory of the country neighboring government (*Danilovskikh, 2016*). The emphasis on the specifics of legal status, the study of the essence of its elements will reveal the role and purpose of border areas, improve the quality and efficiency in their management.

The Kyrgyz Republic as a Central Asian state has a total area of 199.4 thousand km². The main territorial units are seven oblasts, forty districts, twenty-five cities, one hundred and forty aiyl aimaks and nineteen aiyl okmotu. The Kyrgyz Republic borders with the People’s Republic of China, the Republic of Kazakhstan, the Republic of Uzbekistan and the Republic of Tajikistan. Since more than 90% of the territory of our country is occupied by mountains, most of the government border passes through the mountains. To strengthen the border areas in the Kyrgyz Republic, ensure national security, territorial integrity and inviolability of the state border, improve the quality of life and employment, the Law of the Kyrgyz Republic “On special status and development of certain bor-

der areas of the Kyrgyz Republic” was adopted (Law of the Union of Soviet Socialist Republics, 1982).

3.2. Border Area Definition

For the first time, based on a legislative act, the definition of the border area was defined, according to which it is defined as the territory or part of the territory of an administrative-territorial unit facing the state border of the Kyrgyz Republic. To implement the Law of the Kyrgyz Republic “On granting a special status to certain border areas and their development”, to ensure national security, strengthen state borders, solve problems in border areas, promote socio-economic development, live in border areas, to improve the living conditions of the population, as well as create the necessary conditions for sustainable living and reduce the internal migration of people living near the border, a list of individual territories with a special status, as well as some border areas with a special status of the Kyrgyz Republic, was approved. The draft State program for security and socio-economic development was approved.

Thus, the Law of the Kyrgyz Republic “On special status and development of certain border areas” sets specific tasks for the executive authorities, which are important in ensuring life in the border areas of the country. At the same time, among the individual issues of solving economic problems and promoting economic development of the border areas of the Kyrgyz Republic, national issues are at the forefront. In particular, to improve these laws in the field of migration, taxes, customs, crime, to expand and improve the legal framework for international cooperation with neighboring countries on various issues, including the creation of transport communication systems and additional transport corridors, to regulate the use of natural resources and related to environmental protection.

In turn, it is expedient to address the common problems of the Kyrgyz Republic, including border areas, which are clearly visible in the border areas. Following the national interest and national security, the following main threats occurring in the border areas can be identified:

- Territorial aspirations;
- Incomplete international legalization of the government border of the Kyrgyz Republic with neighboring countries, such as the Republic of Uzbekistan and the Republic of Tajikistan;
- Elements of nationalism, ethnic intolerance and regional separatism, religious contradictions;
- Widespread economic and demographic expansion;
- Theft of national treasures of the Kyrgyz Republic, intensification of smuggling activities;
- Mass export of valuable raw materials and goods from the capital and strategic plan;
- Unstable situation associated with low living standards, ethnic conflicts and forced migration;

- Cross-border nature of organized crime and terrorism;
- Increasing regional armed conflicts near the state border;
- Proliferation and concentration of weapons and other means of hostilities;
- Transboundary spread of accidents, catastrophes and natural disasters.

On the other hand, the development of cooperation in the border areas should be identified as an important tool for addressing several local issues. To address this issue, it is necessary, first of all, to create a government program that takes into account the prospects for the development of border areas and cross-border cooperation.

3.3. Border Area after the Soviet Union

After collapse of the Soviet Union and creation of independent republics, the law system sources changed and filled with new content, securing the government's focus on democratic development (Chikeeva, 2013); the border areas of these countries were in a state of crisis. Realizing this, the government sought to solve these problems without additional funding or by new rights. For example, the development of border areas has been a part of the classical regional policy of Western Europe for half a century. It is possible to note the program of the European Union, which replaces each other in real (non-virtual) regions. The main goal of this policy is to eliminate the negative effects of the current barrier functions of the border, the relative isolation and peripherality of the border areas.

Promoting the development of border areas should be one of the most important areas in the government security policy. The border areas are very "mosaic" and not all of them need government support. Some of them are growing and some are in crisis. However, assistance to such areas subsidies and other financial benefits, additional rights, etc. have material content. The only panacea is the path to integration and "struggle" with borders (a single space of a real form, not declarative). Any integration community always represents a way to lower internal barriers, and, accordingly, to increase them relative to third countries. The study of the category of border areas allows us to give the following definition, this is the territory of the Kyrgyz Republic, which includes the definition of special frameworks and regimes for the realization of the most important interests of the individual, society and the state, the area directly involved in the performance of the basic functions of the boundary (connecting, separating and filtering) as well as the definition of special frameworks and regimes directly participating in the main border functions.

3.4. "Border Area" Content Category

The applied content of the category "Border Area" is the development of a set of measures to ensure the territorial integrity of the country and the security of the state border, radically improve the infrastructure of the border area, as well as address a wide range of international and domestic problems. "Border area" has a scientific potential as a basic legal category, which is the interaction of various

spheres of human life (social, political, economic, etc.) in the border area, as well as the laws of neighboring countries on border issues. It also allows for research as a disclosure of the specifics of the development process.

The study of materials on the development of the category under consideration, as well as the analysis of regulations governing relations in the border area, allows us to highlight the following specific features of the border area:

1) The border area (with length) is located along the Kyrgyz Republic government border and its area has distinctive features in terms of natural, social and economic characteristics;

2) The border area is the basic basis for the implementation of key functions of the state border, such as unifying (contact), separating (barrier) and filtering (control);

3) The border area, being part of the border area, is an object of government policy, which is implemented in a certain historical period through border functions in the interests of both residents of the government and the population in general;

4) All subjects of the border area near the border shall participate in ensuring the citizens most important interests, society and the government at the government border following their powers defined by law;

5) Border issues are the subject of legal regulation of legislation adopted in the prescribed manner, as well as international norms, where border areas are determined by the Kyrgyz Republic Government law and international agreements concluded by the Kyrgyz Republic with neighboring countries;

6) The law on the definition of the border area provides possibility for determining characteristics of the organization of local self-government in this area;

7) Due to the special geographical location, the powers of local self-government bodies on issues of local significance in the border area have their own specifics for the implementation of international and foreign economic relations;

8) The border area is a part of the Kyrgyz Republic border area, where the spatial boundaries also include the Kyrgyz Republic government border, airspace and the belonging area.

4. Research Findings

Issues related to the special status of the border area, especially due to the long-standing “unresolved” and the systematic escalation of problems, have recently been raised in the highest authorities, attracting the attention of the press and experts. Border areas lag far behind the rest of the country in terms of socio-economic status, in this regard, the Government of the Kyrgyz Republic has repeatedly stressed the need to pay special attention to issues of border areas.

In fact, the authorities of our country are engaged in the issue of border regions not in the economic or social sphere, but only when these problems take on a political color and threaten the image of the state and politics. However, working in such a regime was, of course, ineffective and both regions had to panic.

5. Conclusion

Summarizing above, in the current situation, the border area is subject to uncontrolled and illegal migration, human and drug trafficking, etc. The threats posed by transnational organized crime have become concentrated. There are also armed incidents in the border zone, the intensification of the destructive activities of foreign special services and organizations, the growing global demographic situation, threats to the environment and food security.

After Soviet Union, most border areas are lagging behind in the development of transport and border infrastructure. There are geographical reasons for the crisis in the border areas, which are located on the country periphery. Research significance showed necessity to create a government program that considers the prospects for the development of border areas and cross-border cooperation.

Conflicts of Interest

The authors declare no conflicts of interest regarding the publication of this paper.

References

- (2009) Resolution of the Council of People's Commissars of the Central Committee of the All-Union Communist Party of Bolshevik. February 1, 1938 No. 612. *Collection of Scientific Articles*, 5, 29-37.
- Beugelsdijk, S., & Mudambi, R. (2013). MNEs as Border-Crossing Multi-Location Enterprises: The Role of Discontinuities in Geographic Space. *Journal of International Business Studies*, 44, 413-426. <https://doi.org/10.1057/jibs.2013.23>
- Bobushev, T. S. (2010). *Territorial Geography of Kyrgyzstan* (222 p). Bishkek: American University in Central Asia.
- Boshno, S. V. (2013). Government. *Law and Modern Governments*, No. 6, 64-79.
- Bufon, M., Minghi, J., & Paasi, A. (2014). *The New European Frontiers: Social and Spatial (Re)Integration Issues in Multicultural and Border Regions* (375 p). Cambridge, UK: Cambridge Scholars Publishing.
- Chikeeva, Z. Ch. (2013). The System of Sources of Law of the Kyrgyz Republic in the Transition Period. *Journal of the Higher School of Economics*, No. 4, 154-163.
- Concluding Document* (1989). Vienna Meeting 1986 of Representatives of the Participating States of the Conference on Security and Co-Operation in Europe, Held on the Basis of the Provisions of the Final Act Regulating to the Follow-Up to the Conference, Vienna, 81 p.
- Danilovskikh, T. E., Kuzmicheva, I. A., Flick, E. G., & Kuzmichev, D. I. (2016). Development Stages and Forms of Cross-Border Trade between China and Russia. Territory of New Opportunities. *Bulletin of Vladivostok State University of Economics and Service*, 3, 16-22.
- Decrees of Soviet Power* (1957-1997). V.1-14. Moscow, 345 p.
- Decrees of the Soviet Power* (1957). Institute of Marxism-Leninism under the Central Committee of the CPSU, Institute of History of Acad. Sciences of the USSR. Moscow: Politizdat, 1957-1997, V. 2, 331 p.
- From the History of the Cheka Soldiers and the Border Guard 1917-1921* (1958). Docu-

- ments and Materials (455 p). Moscow.
- Kolotusha, V. V. (2013). Features of Force Coercion in the Border Area in Modern Conditions. *Almanac Space and Time*, 3, 3.
- Kubin, I., & Gardini, L. (2020). On the Significance of Borders: The Emergence of Endogenous Dynamics. *Journal of Economic Interaction and Coordination*, 1-22. <https://doi.org/10.1007/s11403-020-00302-5>
- Kurmanalieva, G., & Crewett, W. (2019). Institutional Design, Informal Practices and International Conflict: The Case of Community-Based Pasture Management in the Kyrgyz-Tajik Border Region. *Pastoralism*, 9, Article No. 15. <https://doi.org/10.1186/s13570-019-0145-9>
- Kyrgyz Republic Land Code (2020). *With Amendments and Additions as of August 14*. On the Implementation of this Code, see the Law of the Kyrgyz Republic on June 2, 1999, No. 46.
- Kyrgyz Republic Law (2011). *About Local Self-Government*. Amended by the Law of the Kyrgyz Republic on July 15, No. 101. <http://cbd.minjust.gov.kg/act/view/ru-ru/203102>
- Kyrgyz Republic Law (2015). "On the State Border of the Kyrgyz Republic" of May 16, No. 98. Amended by the Law of the Kyrgyz Republic of December 1, 2017, No. 197 (2).
- Kyrgyz Republic Law (2019). *About Local Self-Government*. August 8, No. 118. <http://cbd.minjust.gov.kg/act/view/ru-ru/111965?cl=ru-ru>
- Law of the Union of Soviet Socialist Republics (1982). On the State Border of the USSR Vedas. *USSR Armed Forces*, No. 48, Article 891.
- Mezhevich, N. M. (2006). Definition of the Category "Region" in Modern Scientific Discourse. *Pskov Regionalological Journal*, 2, 3-21.
- Shigal, D. A. (2013). The Theory of the Historical and Legal Comparative Method. *Legality Problems*, 124, 1-8.
- Skvortsova, N. A., Solovieva, E. D., Chugunov, A. I., Sakharova, E. V., & Chervyakov V. A. (1973). *Border Soldiers of the USSR 1918-1928*. *USSR Academy of Sciences, Political Directorate of Border Soldiers, Central State Archives of the Soviet Army*, 894 p.