

THE LEGAL MECHANISMS FOR REGULATING THE ENVIRONMENTAL SITUATION IN THE REPUBLIC OF KAZAKHSTAN

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ABSTRACT

At present time, transition to environmentally sound and sustainable development becomes a priority strategy for the development of modern Kazakhstan. Kazakhstan is geographically at the center of Eurasia. It is a kind of political, cultural and economic bridge between Europe and Asia. For many years our country has been the link in the development of landscape and ecological systems on the continent. The territory of Kazakhstan, a variety of climatic conditions, specific water balance - all this has an impact on the ecological situation throughout Eurasia.

Keywords: environmental legislation, ecological security, development, Kazakhstan

INTRODUCTION

The development of Kazakhstan faces significant hurdles, which represent a threat to national security. In order to harmonize the environmental legislation of the Republic of Kazakhstan with the best international acts, the transition to the new standards, improving the system of state control was adopted by the concept of ecological security of the Republic of Kazakhstan [1].

Despite some positive trends in addressing this issue, for example, in the dynamics of emissions for several years in the republic there is a slight decrease. In 2010 compared with 2006, emissions decreased by 23.8%, from 2009 to 4% [2].

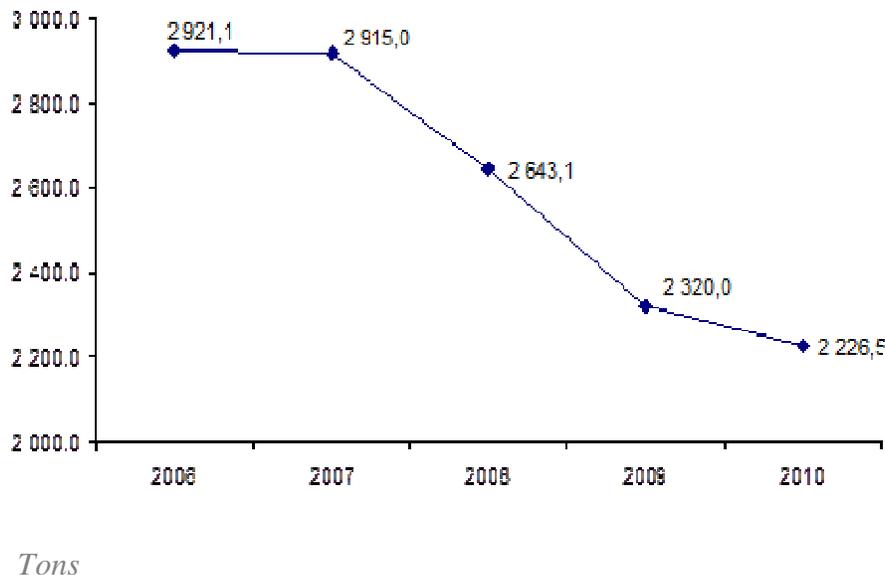


Figure1: The dynamics of pollutant emissions into the atmosphere from stationary sources

It is to emphasize that even in Kazakhstan the Environmental Code was adopted in 2007. At that time it was the only Commonwealth of Independent States country where the Environmental Code was existed.

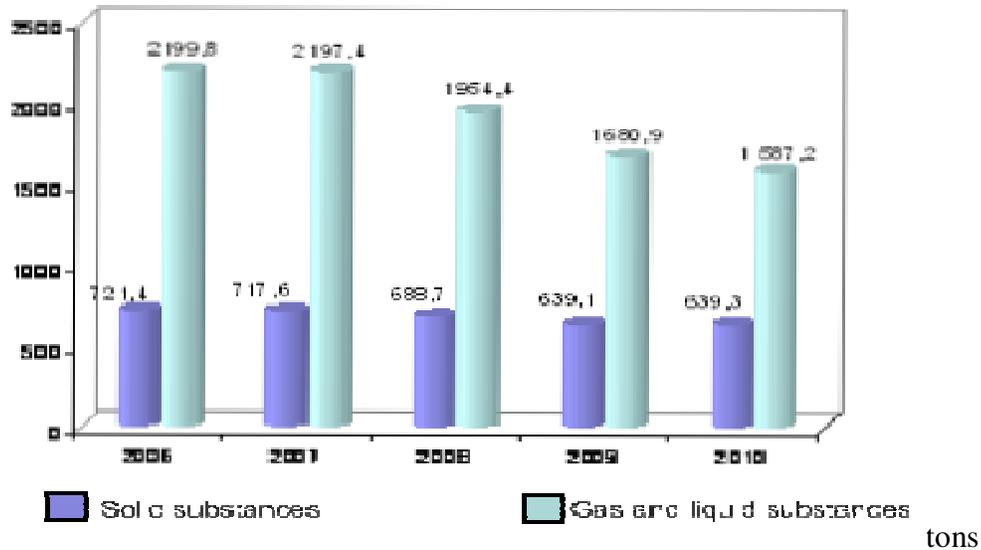


Figure 2: The structure of the emission of pollutants

As seen in Figure 2, the structure was dominated by emissions of pollutants gas and liquid substances, the volume of which in 2010 compared to 2006 decreased by 27.8%. Emissions of solids in 2010 compared to 2006 decreased by 11.3%.

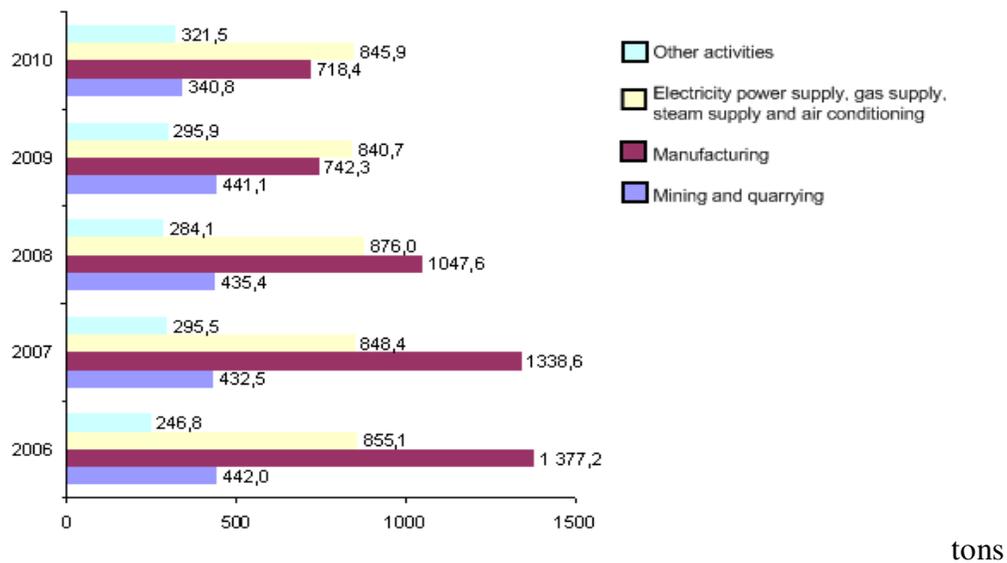


Figure 3: Emissions of air pollutants from stationary sources of economic activities in years of 2006-2010

In 2009-2010, the largest amount of emissions accounted for businesses of electricity, gas, steam and air conditioning. In 2010 compared with 2006 the volume of pollutants from the mining industry decreased by 22.8%, from the manufacturing industry by 47.8%, from electricity

companies, gas, steam and air conditioning decreased by 1% [2] . Yet it should be noted that the environmental situation in the republic is far from the desired result.

Purpose of the article is the analysis of the legislation of the Republic of Kazakhstan, which regulates the environmental safety of our state. The article refers to the state environmental safety protection of vital interests and rights of the individual, society and the state from threats arising from anthropogenic and other environmental impacts. The main subjects of environmental safety are the state, as well as legal entities and individuals.

Environmental security is an integral part of environmental law, by which we mean a system of law governing social relations in the sphere of interaction between society and nature in order to preserve, promote and improve the environment for present and future generations. Environmental security is closely linked with environmental legal relationship. Ecological relationship is a certain kind of social relations that result from the interaction between society and nature. They are governed by the norms of environmental law.

The reason for the emergence of relationships is legal facts. In the field of ecology, they are divided into events and actions. An event occurs and causes environmental and legal relations against the will of man. These include natural disasters, fires, volcanic eruptions, etc. They do not always act as a purely natural phenomenon, most often the result of ill-considered human activity. Action - the most common method of ecological relationships. Human activities are a major source of harm to both the environment and humans. Such actions can be divided into positive and negative. Positive human behavior as a participant in the implementation of legal means that human must obey the environmental regulations of the law. Such actions include the judicious use of natural resources, environmental protection, etc.

The negative ecological relationship is when environmental regulations are violated; the environment and human health are harmed. These legal facts are environmental offenses. Generate negative environmental legal mechanism for environmental liability.

The objects of ecological relationships are the natural objects. These include individual natural objects - wood, minerals, water, atmosphere, etc. Nature reserves, national parks, wildlife sanctuaries, etc. may also be the subject of legal relations.

Type of object relationship defines the rights and obligations that arise from the subjects. The basis for the ecological relationship is the rights and obligations of participants of legal relations on the use and protection of the environment. According to the content of the rights and responsibilities of all actors can be classified into four groups: 1) of natural resources - media rights and obligations under the management of the environment, 2) bodies of representative and executive power, it is specially authorized bodies of state, who have the right to regulate use of natural resources (Ministry of Environment, etc.), and 3) the profile of environmental associations, endowed with the right to participate in environmental law and legal relations of public control over the implementation of environmental regulations (in the movement of our Republic, and 4) the judicial and procuratorial organs of supervision which oversee legitimacy of environmental relationships. Industry authority coexists with complex powers. Carriers such powers are the specially authorized state bodies such as the Ministry of Environment.

The modern concept of environmental security in our country is a system of state-recognized principles and priorities. They, in turn, are the basis for the formulation of foreign and domestic policy, legal and economic mechanisms aimed at ensuring and maintaining a supportive

environment and sustainable economic and human development, prevention of natural disasters and industrial accidents. The state policy of environmental safety is based on the following principles:

1. **Introduction of the principle of "pays the user and the polluter"** mandatory compensation for damage caused to human health and environmental damage and social protection for victims of environmental reasons. For example, since 2011, major oil companies, energy, mining and metallurgical and chemical industries, agriculture and transport, with greenhouse gas emissions of more than 20,000 tons per year must obtain the appropriate quota. This legal measure to reduce emissions is similar to the Kyoto mechanisms.
2. Submitted **permissive procedure for manufacturing and other** activities that could pose a threat to environmental safety. To this day, many Kazakh companies do not have any liability, nor compensate for the damage caused by not taking steps to reduce waste volumes and reduce their impact. It has a little resonance levying of administrative fines on industries that continually violate environmental laws. Despite the systematization of environmental offenses managers of such enterprises do not feel full of guilt and responsibility for the activities of their businesses. In our opinion, is the simultaneous involvement of a financial liability may make managers more responsible approach to environmental issues in the enterprise. To resolve this issue in the Tax Code is proposed to introduce replacement payments for environmental taxes. In our opinion, this is the most advanced practices, which go the developed nations of the world. "Green" tax will be charged for adverse impact on the environment. These include a tax on a very limited list of issues, a tax on energy consumption, the tax on fuel is consumed, the tax on water consumption, transportation tax on old cars. As for large companies, there is our state has already taken several measures, in particular, has established an additional rate of payment for the accumulated volume of waste. Businesses will be required to develop and approve a program of the Ministry of waste management.
3. **Identification and remediation of disturbed areas, ecosystems and natural systems** in time. To remedy this situation, the new bill introduced the criterion of environmental crime. Environmental offense - it is illegal, culpable action (action or inaction) committed by law capable entity causing or carrying a real threat of causing environmental harm or violate the rights and lawful interests of environmental law. In this type of crime has distinctive features:
 - a. The wrongfulness of (general and special), i.e, the existence of the prohibition of conduct, norms of environmental or other law.
 - b. Guilt (although international law and the law of the Republic of Kazakhstan shall establish liability that doesn't charge for damage a source of danger).
 - c. The punishment for that is availability of sanctions for violations of the prohibitions set forth in the law, and the bodies (officials) authorized on behalf of the state in their application.
 - d. Environmental, which is manifested in the characteristics of the object assault (environment and other elements associated with it, and objects), harm.
 - e. Subjectivity as an indication of the status, quality, or the identity of persons (natural or legal) held liable.
 - f. The public danger, reflected primarily an indication of the object and objective aspect of abuse (consequences).

- g. Finally, in the existing definitions and specifies the type of offenses (material, formal, putting at risk).

Environmental crimes are a form of wrongful conduct. They can be classified into several types according to various criteria:

- i. By type of legal liability - environmental crime, administrative and disciplinary misdemeanors environmental civil violations.
- ii. The facility attacks - on land, water, forest breaches, violations of legislation on the protection of wildlife, the continental shelf and so on;
- iii. On the subject - to challenge the officials, citizens, legal persons.
- iv. Acts on the objective side - the unlawful destruction and damage to natural objects, the deterioration of the state (quality) of the environment and its components, breaches of the rules of nature, failure to comply with environmental regulations, illegal use of mercenary motives, etc.
- v. On the subjective side - perfect for guilty, that is intentionally and negligently, without the guilt.
- vi. Source of law, which contains a rule of conduct and the sanction for its violation, - provided only on environmental legislation, but other (e.g., criminal) law, both.
- vii. To the proper entity authorized to implement measures of legal liability - at punishable by judicial and administrative bodies (officials) of the Republic of Kazakhstan and international judicial and administrative authorities. In research using other bases of classification, the fractional allocated more types of environmental violations.

The legislation of the Republic of Kazakhstan formulated a large number of compounds of environmental violations: material, formal and. abandonment of general and specific risk; basic and advanced. The presence of the elements of environmental offenses in the act of a person is the basis of responsibility, along with guilt and containing the prohibition of legal norms.

The object of environmental offenses are legally protected legal good, (public relations), including the environment as a whole or its individual properties, quality of habitat-forming elements, i.e. components - land, minerals, water, air, flora and fauna, biodiversity, etc., ecological safety of population and territory, environmental law and order, life, health and property of people. The subjects of environmental offenses are individuals, including officers, and persons who perform administrative and economic, organizational and administrative, functions of commercial organizations and legal entities (organizations, institutions and others).

4. Provide **complete, accurate and timely information to citizens and organizations** about the environmental hazards and existing activities in the field of environmental security. So, for example, three-volume set National Environmental Atlas of the Republic of Kazakhstan. Volume I of this edition - Natural-resource conditions of the environmental situation. Volume II - Socio-economic conditions of the environmental situation. Volume III - Ecological condition of natural and economic systems. The purpose of the authors of the Environmental Atlas is information and analytical support to national, regional and local environmental programs. Every year in our country national reports on the state of the environment are being published. "Ecologist" journal is produced weekly and a "Water and

Sustainable Development" journal is produced quarterly. There is persistent environmental category for TV channels. In 2006, published and distributed throughout the country the first in CIS countries "Ecological Primer" [3]. The Environmental primer for each of the 42 letters of the alphabet of the Kazakh language are colorful pictures, short poems and notes, which reveal the importance of the environment and nature of emerging environmental issues that are adapted to children's understanding. "Environmental Primer" is recommended by the Ministry of Education and Science as additional material for preschool and primary school education. The developers are confident that this book will play a major role in instilling the children love and respect for nature.

5. **Compliance with international law**, the implementation of international treaties of the Republic of Kazakhstan regulating the environment and natural resources (UN Convention on the Law of the Sea 1982, Convention on Climate Change 1992, the Convention on Biological Diversity in 1992, acts to ensure public access to environmental information and justice under the Aarhus Convention, the rules of accounting, inventory and valuation of greenhouse gases and ozone-depleting substances under the Montreal Protocol, and others). Standards correspond to the established laws of the Republic of Kazakhstan that endorses the authority of the Republic of Kazakhstan on the definition of public policy in the use and protection of the environment as a whole (Constitution of the Republic of Kazakhstan, the Republic of Kazakhstan Law of 15.07.1997, № 160-1 «On Environmental Protection" "On Specially Protected Natural Areas", "On Ecological Expertise", in 1998 - "Radiation Safety", in 2002, the Law "On protection of atmospheric air." In the field of environmental management - presidential decrees having the force of law, "On Subsoil "(1996) and" On Oil "(1995), in 2003 - Forest, Water and Land Codes. Developed and approved most of the necessary sub-legal acts).
6. **Mandatory participation in international activities to ensure environmental safety**. For example, in the development of the Environmental Code of Kazakhstan was used by about 20 leading and guidance documents from various international organizations, 18 international conventions, EU directives 30 and acts of foreign states, the draft model code of the Commonwealth of Independent States, more than 200 legal acts of Kazakhstan legislation.

Environmental legislation of the Republic of Kazakhstan is based on the Constitution of the Republic of Kazakhstan and shall consist of this Code, and 50 other legal acts of the Republic of Kazakhstan (the Act of July 15, 1997 "On Environmental Protection", "On Specially Protected Natural Areas", from March 18, 1997, the "On Ecological Expertise" and others).

Thus, awareness of the need and, more importantly, the state's ability to implement the concept of environmental security suggests the stabilization and modernization of the socio-political relations. What other factors may condition the development of the concept of environmental security in our republic?

In our view, the change of the attitude of Kazakh society to the problem of ecological safety occurs through the recognition of its economic feasibility. In assessing the prospects for sustainable development and the interests of national security, we must understand the negative impact of environmental factors on economic growth. The development of the traditional model of economic growth affects not only environmental degradation, but does not guarantee the stability of the economic system, limiting the resource base of economic growth (both natural and human.) Accordingly, the economic cost of restoring these resources rises. The actual results of economic progress impaired degradation of the environment.

Taking into account all the above, our state amends the Criminal Code, Administrative Code, Environmental Code, the Tax and Budget Codes, the Code "Nation health and public health system" and other laws, such as strengthening of administrative and criminal liability for environmental offenses; reducing greenhouse gas emissions through the introduction of market mechanisms, the decrease in the accumulation of waste, etc.

In this context, the government adopted some measures to improve the ecological relations. Yet it must be noted that the state of modern environmental legislation to date, cumbersome and often contradictory, which creates certain conditions for its violation, and often a complete failure. So, for example, the appointment of an administrative penalty for water offenses under Article 276 "Violation of the rules of protection of water resources" is used three bodies - the bodies of the Ministry of Environment of the Republic of Kazakhstan, the authorities of the Ministry of Health of the Republic of Kazakhstan, the bodies of the Committee on Water Resources Ministry of Agriculture of the Republic of Kazakhstan. Article 277 "Damage to the water facilities, equipment and fire water systems, violation of rules of operation" - four bodies: the bodies of internal affairs (police) agencies of the Ministry for Emergency Situations of the Republic of Kazakhstan, the authorities of the Ministry of Health of the Republic of Kazakhstan, the bodies of the Committee on Water Resources Ministry of Agriculture Management of the Republic of Kazakhstan. In this situation, these bodies overlap and duplication usually leads to "doing nothing" in the expectation that everything will be done by other bodies. Consequently, the constitutional provisions that establish a sphere of public relations as "environmental security" remain unrealized under the legislation on the protection of the environment, or in separate stand-alone legislation. We believe that the development of constitutional provisions, the relationship of environmental safety should be regulated in the environmental legislation on the job relationships for environmental protection and natural resources. The most appropriate form for the regulation of environmental relations in their totality, it appears the Concept of environmental safety. Therefore, the main problem is the systematization of the legislature through the codification of environmental law.

In the transition to market relations in the field of environmental business of design changes are possible. We believe in the first place, it is necessary to actively use such penalties as the compensated seizure of the object, which was a tool of either the subject of an administrative offense, the confiscation of the object, which was a tool of either the subject of an administrative offense, as well as property obtained as a result of an administrative offense. For example, if a vessel has been a source of water pollution, it should be removed.

Second, funds received from the environmental policy on a fee basis to extend activities to improve the environmental situation in our country. Third, we consider it expedient to take measures to tighten controls in the system and give the right to control the environmental authorities' additional powers to eliminate cases of offenses relating to the infliction of harm and damage to the environment.

Fourthly, it is necessary to systematically develop the right to reasonable ecological use, raising its status clearly represented the rights and obligations set forth the state protection. In this case, the mechanism will earn economic interest of entrepreneurs and businessmen in the preservation and improvement of the status granted to them by elements of the ecosystem. Fifth, we need continuous improvement of environmental legislation and the gradual exclusion of contradictions in it, and Resources of enforcement standards and the development of standards ecologized other

branches of law. For example, the administrative responsibility for the offense comes to water standards but the administrative law of the Republic of Kazakhstan. Although the list of administrative offenses provided for in st.139 Water Code of the Republic of Kazakhstan, measures of administrative penalties are only in the Code of Administrative Offences of the Republic of Kazakhstan.

Consequently, the concept of security of the Republic of Kazakhstan became a kind of impetus for the development and improvement of legislation in the field of environmental law of the Republic of Kazakhstan. As the law enforcement practice in recent years, there is a gradual change in the fundamental solution of environmental problems and the sustainable and protective of natural resources. Emerging market relations in the Republic cause a need for legal regulation of environmental law in the context of the concept of environmental security in order to preserve the environment for the benefit of present and future of our Republic.

REFERENCES

1. The concept of environmental security of the Republic of Kazakhstan //online.zakon.kz / Document /? doc_id = 1045395
2. Statistics of Kazakhstan // www.stat.kz
3. Report of the Minister of Environment of the Republic of Kazakhstan Nursultan Iskakova on 14.01.2008, the // Official website of the Ministry of Environment www.nature.kz.