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### Analysis of the environmental legislation of the Republic of Kazakhstan

This article reveals the analysis of the legislation of the Republic of Kazakhstan relating to ecological responsibility of nature users. Such terms as “the system of assessment of the impact on the environment”, “environmental damage”, “direct” and “indirect” methods of economic assessment of damage are analyzed in the article. On the basis of foreign experience research the author offers the ways of improvement of national ecological legislation.

**Key words:** ecological legislation, ecological responsibility, nature users, society ecologization, deglaciation, economic assessment of environmental damage, “green economy”, national fund for the protection and recovering of the environment.

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#### Қазақстан Республикасының экологиялық заңнамасын саралау

Мақала Қазақстан Республикасының табиғат пайдаланушылардың экологиялық жауапкершілігі мәселесі бойынша заңнаманы талдауға арналған. Мақалада «қоршаған ортаға ықпал жасау бағалау жүйесі», «қоршаған ортаға зиян», залалды экономикалық бағалаудың «тура» және «жанама» әдістері сияқты ұғымдар талданады. Мақала авторы шетел тәжірибесін зерттеп ұлттық экологиялық заңнаманың жетілдіру жолдарын ұсынады.

**Түйін сөздер:** экологиялық заңнама, экологиялық жауапкершілік, табиғат пайдаланушылар, қоғамды экологияландыру, мұздықтың еруі, қоршаған ортаның зиянын экономикалық бағалау, «жасыл» экономика, қоршаған ортаны қорғаудың және қалпына келтірудің ұлттық қоры.

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#### Анализ экологического законодательства Республики Казахстан

Статья посвящена анализу законодательства Республики Казахстан по вопросу экологической ответственности природопользователей. В статье анализируются такие понятия, как «система оценки воздействия на окружающую среду», «ущерб окружающей среде», «прямой» и «косвенный» методы экономической оценки ущерба. На основе исследования зарубежного опыта автором предлагаются пути совершенствования национального экологического законодательства.

**Ключевые слова:** экологическое законодательство, экологическая ответственность, природопользователи, экологизация общества, таяние ледников, экономическая оценка вреда окружающей среде, «зеленая экономика», национальный фонд по защите и восстановлению окружающей среды.

The Environmental Code of the Republic of Kazakhstan (hereinafter referred to as «Environmental Code») aims to achieve the following key objectives: the compilation and systematization of environmental protection issues at the legislative level; raising the status of environmental requirements and standards to

the level of legislative acts of direct action; the adoption of international standards in the practice of environmental protection in our country.

About 20 guiding and recommendatory documents of various international organizations, 18 international conventions, about 30 EU directives and legislation of foreign states, the draft

model Code of the Commonwealth of Independent States, more than 200 legal acts of Kazakhstan legislation have been used in the development of the Environmental Code [1, 2, 3, 4].

Environmental legislation of Kazakhstan is based on the Constitution of the RK and consists of the Environmental Code and 50 other normative legal acts of Kazakhstan [5, 6, 7, 8].

According to the Constitution of the RK «international treaties ratified by the Republic shall have priority over its laws and be directly implemented except the cases, when the application of an international treaty requires the issuance of law» (paragraph 3 of Article 4). The Environmental Code regulates relations in the sphere of protection, restoration and preservation of the environment, the use and reproduction of natural resources in carrying out economic and other activities related to the use of natural resources and the impact on the environment, within the territory of the RK. Participants of environmental relations are individuals and legal entities, state, as well as government bodies which are responsible for state regulation in the sphere of environmental protection and governance of natural resources [9].

We can identify a number of the following problems in the sphere of environmental relationships in the RK:

1) The high level of corruption in government which is typical for Kazakhstan, which leads to the weakening of the control functions of the state, misconduct by government officials;

2) the absence of any legal economic mechanisms encouraging a nature user for conservation activities and the implementation of cleaner manufactures and technologies, etc.;

3) the legislation of Kazakhstan does not provide the establishment and operation of the National Fund for the protection and restoration of the environment, which should be formed at the expense of environmental obligatory payments, fines and amounts collected from a causer of the environmental damage;

4) the establishment and operation of the Regional Environmental Centre in Almaty is not solved at the legislative level. The purpose of creation of the center is the studying the process of deglaciation in the south of Kazakhstan;

5) low ecologization level of society – people do not know about the government programs implemented in the sphere of environmental

protection. In this case, a low level of development of environmental education, scientific maintenance, ecological propaganda and public participation in decision making process are observed;

6) the use of legally and practically wrong techniques and methods of economic assessment of environmental damage. By indirect method of assessing environmental damage nature users have to pay high fees and charges which are directed to the state budget rather than to restoration of the environment.

The economic assessment of the damage caused to the environment is a monetary value of the expenditure required to restore the environment and consumer properties of natural resources. Economic evaluation of damage from air pollution and water resources over the established standards, as well as the disposal of production and consumption wastes, including radioactive waste, excess of established standards determined by direct or indirect methods according to the regulations are approved by the Government of the RK.

The direct method of economic damage assessment is to determine the actual costs required to restore the environment, filling of degraded natural resources and the rehabilitation of living organisms through the most effective engineering, administrative, technical and technological measures. In the sphere of environmental protection officials of the authorized body primarily consider the possibility of the implementation of measures to restore the environment by the person who caused the damage to the environment [10].

The corresponding liability for conducting activities to restore the environment is set out in the guarantee letter to the person who caused damage to the environment, indicating specific measures and deadlines for their implementation. If the economic assessment of the damage is carried out by the direct method, officials of the authorized body in the sphere of environmental protection may involve independent experts. The experts may be environmental auditors, experts from design, engineering and scientific organizations. The obligation to pay for the independent experts is devolved on the person who caused the damage to the environment.

The indirect method of economic assessment of damage is used in cases when direct method of economic assessment of the damage cannot be applied. Economic assessment of damage by an

indirect method is determined depending on types of impact on the environment by summing the damage of each ingredient [11].

Foreign environmental legislation and world environmental policy

One of the best environmental Codes in the global space is the Code of the French Republic. At the same time in a number of rapidly developing environmental legislation environmental issues are regulated by a large number of regulations, among which are the thematic laws (e.g., the «Law on the Protection of the Environment» of Canada or the Law «On environmental protection and pollution of the environment» of Norway). Environmental law of the European Union is based on the principles of a high level of environmental protection, integration, maintenance and improvement of environmental quality, promote international means of regulation; account of local factors; forethought; prevention; recover damages from its sources responsibility for pollution. Available scientific and technical information, the regional differences in environmental conditions, benefits and drawbacks, the level of economic and social development of the European Union and the balanced development of the regions shall be taken into consideration along with the implementation of the above mentioned principles [12].

In Canada, if a legal entity violates environmental regulations or permissions, he / she may be involved in criminal, civil and / or administrative responsibility. A claim for compensation for pollution damage may be brought by a civil action, and should be based on the damage caused by pollution.

Norwegian law has envisaged compensation for the restoration work, or compensation for losses incurred as a result of the adoption of reasonable measures to prevent, control and reduce or eliminate the damage caused by pollution of the environment; compensation for loss, damage and loss due to the fact that the pollution had an obstruction or restricted the rights of a general or commercial use of the environment and its resources; compensation for losses incurred by employees due to contamination, which led to the suspension of work or reduction in the volume of transactions.

Institute of financial guarantees is secured at the European level. The purpose of the Directive 2004/35/ES number of April 21, 2004 «On environmental liability with regard to the

prevention and restoration environmental damage» is the prevention and restoration of environmental damage. Art. 14 of the Directive contains obligations of adoption of mechanisms in case of insolvency of operators with the purpose of enabling operators to use a variety of financial guarantees covering their obligations resulting from this Directive. The first group of such duties includes the activities to prevent harm. The second group includes the duties of recovery actions, including immediate restoration actions and follow-up. If an operator cannot prove that the damage or the threat of it had been caused by a third party and came despite the fact that appropriate safety measures had been taken in due time, all costs for the implementation of these obligations must be carried out by an operator

In France, the principles of prevention of environmental damage and its compensation are included in the Constitution of France [13].

According to the Swedish Environmental Code nature users must make their own arrangements for the prevention and elimination of negative irritants (vibrations, light, sound, odor, etc.) without appropriate guidance from the administrative bodies. In the process of assessing the harm to human health both physical and mental harm are evaluated. In this case experts use the «polluter pays» principle, which consists in the fact that the person whose activity causes or may cause harm to the environment, should finance the measures to prevent such damage or eliminate it, regardless of whether such activity is commercial or not. In general, therefore, currently in environmental legislation of industrialized countries there is a tendency to allocate environmental responsibility from general civil liability aimed at preventing and eliminating the harm caused to the environment. First of all, it concerns the changes in the regime of liability [14, P. 32].

In the legislation of these countries the principle of responsibility based on fault is replaced by the principle of responsibility based on causation, when the possession or use of a particular type of industrial equipment or facility may lead to obligation of compensation for the damage, if there is a cause-and-effect relationship between the object and the case of harm to the environment. The Constitution of the RK (Article 31) states that one of the fundamental tasks of the state is to protect the environment favorable for life and human health.

The Strategic Plan of the RK up to 2020

indicates that the successful diversification of the economy is inextricably linked with the solution of environmental problems and reducing the negative impacts of anthropogenic stress.

In 2007, the Environmental Code was adopted in order to systematize all the legal and regulatory bases, improve the system regulation, government control, and other institutions, as well as the introduction of advanced international standards in the practice of environmental protection [1].

However, some regulations of the current legislation do not perform socially useful purposes, create unreasonably high administrative barriers to business and have a high propensity for corruption potential.

The existing legislation on the recovery of environmental damage is not aimed at restoring the state of natural objects and is used only as an instrument to supplement the state budget with sums of money that are not directed to the solution of environmental problems. In this regard, we offer the measures to improve the environmental legislation of Kazakhstan basing on the analysis of the current legislation and practice, as well as studying the environmental regulation of some of the most developed foreign countries bills.

Environmental Code unclearly and contradictorily sets the priority of reparation the environment in natural form. In this regard, in practice compensation in natural form is implemented just in one case out of ten. In particular, the Environmental Code obliges an official of the authorized body for environmental protection in the first instance to consider the possibility of reparation for damage in the natural form (paragraph 2 of Article 109 of the Environmental Code).

According to the Environmental Code the economic assessment of environmental damage is a «monetary value of the expenditure required to restore the environment and consumer properties of natural resources» (paragraph 1 of Article 108 of the Environmental Code).

However, when determining the amount of damage to the environment by an indirect method the data are used which have no relation to expenses required to restore the environment. The indirect method, inter alia, is based on the use of monthly calculation index, the raising factor which is equal to 10, and environmental risk coefficient.

The funds levied by the indirect method are not earmarked for measures to restore the damage

caused to the environment. Thus, the main objective of monetary compensation for the indirect method is to replenish the budget of the state, and not the restoration of the environment.

Climate change is the main challenge and we need to prepare for current and future risks and threats, because the problem will not only affect the environment but also the socio-economic development of the country.

According to the experts-environmentalists of Al-Farabi Kazakh National University the consequences of climate change in Kazakhstan will be displacement of zones of moisture to the north boundary, increasing the desert, degraded land, the loss of biological diversity. Even now rapid deglaciation, mudflow and landslide activity are increasing.

Kazakhstan adopted the voluntary obligations to reduce greenhouse gas emissions by 15 percent and 25 percent by 2020 and 2050 respectively, compared to the baseline, 1992. The development of renewable sources of energy – water, sun, wind and biomass – will not only reduce environmental pressure, but will stimulate new production of wind, hydraulic power systems, solar panels, serving the service companies. In the future, it should increase the production of goods and services with high added value, it will create new work, «green» places.

Enhancing energy efficiency standards and energy efficiency in the production, transportation, housing and utilities sector will favorably influence the quality and cost of goods and services. Development and implementation of low-carbon technologies will open a huge potential for Kazakhstan business and attract investments into the country.

Many developed countries have worked out national strategies for low-carbon development, and Kazakhstan should be involved in the process of establishing new international standards and norms of resource conservation [15].

The relevance of low-carbon development is emphasized in the world at the highest political level: Meeting of “The G-20», «Big Eight», the Conference of Parties of the Framework Convention on Climate Change and other international meetings.

At the last World Summit of the UN «Rio +20» Kazakhstan has initiated the Partnership Program «Green Bridge» and global energy strategy that was incorporated into the final program of the summit. According to the instructions of the Head of the



State the strategy for the country's transition to a green economy should be established by 2050. The initiative of Astana can be called an analogue of the concept of low-carbon development, but at the interregional level. Therefore, the goals, objectives and activities of the initiative completely coincide with the priorities of low-carbon economy of Kazakhstan.

In the framework of the Initiative of Astana it is planned to create an international center and the regional transmission network of green technologies. This is a unique opportunity for developing countries, including Kazakhstan, to obtain resource-saving technologies, best practices and scientific knowledge for low-carbon development. In addition, our country can get advisory assistance of leading experts in the development and implementation of long-term programs of «green» businesses in different sectors of the economy, national policies on climate change and its consequences. Site-event « the Initiative of Astana: Kazakhstan and low-carbon development» organized by the Ministry of Environmental Protection and the United Nations Development Program is dedicated to the theme of low-carbon economy. It is a well-known fact that Astana will host EXPO-2017, the theme of this exhibition is «Energy of the Future.» The implementation of the Expo ideas should help both Kazakhstan and the international community to solve the problems related to energy. At this stage of the development of our country the projects of many foreign companies that are implemented in Kazakhstan reduce energy consumption and exhaust emissions, ensure high efficiency of water use. Foreign companies and investors have proposals on the construction of modern power grids and railway electrification.

The idea of a «green economy» is the greening of economy and now it is important to practically implement these principles. The term «green economy» is a relatively new trend in economic science that emerged in the last two decades. The main thesis of direction is the postulate that the economy is a part of the environment and nature. Being a dependent component of the natural environment, the «green economy» is its integral part [16].

The basis of the «green economy» makes clean or «green» technology («cleantech» or «greentech»), such new technologies or business models offer competitive income to investors

and customers and at the same time they provide solutions of global problems. It is generally accepted that friendly (clean) technologies work with the causes of environmental problems using innovative new approaches, radically changing the products, technology and consumer behavior.

The competitiveness of manufactured production within the «green economy» and the growing demand for environmentally friendly products has attracted a significant amount of investments.

It was allocated \$ 750 billion (1 percent of world GDP) on the implementation of this program in Kazakhstan. Meanwhile, according to the Worldwatch Institute, the global market for «green» products and services is \$ 546 billion. According to forecasts of Cleantech, the market size of friendly technologies will be about \$ 2 trillion by 2020. The laws on wind energy, energy conservation, recycling of industrial and municipal solid waste were adopted for the «greening» of the economy in Kazakhstan. In order to integrate the principles of «green economy» the special Interdepartmental Council was established two years ago.

Kazakhstan seeks to the improvement of environmental protection and the transition to new technologies. Thus, the initiative proposed by Kazakhstan entered the final declaration at the UN Conference on Sustainable Development Rio +20 in Brazil, June 2012. This initiative supported by the international community is called Partnership Program «Green Bridge». We have good opportunities for the implementation of these ideas: vast territory, favorable geopolitical position, financial and natural resources. Kazakhstan has the means to implement «green economy» and we must distribute them in a proper way.

We have the money that goes to the State budget through environmental charges and fines, and these funds should be used to improve the environmental situation in the regions, reducing greenhouse gas emissions, air purification, recycling of solid waste, and so on.

The mechanism of financing of environmental and nature restoration activities would be effective, if payments imposed on nature users, related to the violation of environmental regulations, would be used purposefully.

For this purpose we recommend to establish the Republican Fund for the protection and restoration of the environment which would include the

following fees: environmental contributions paid for excessive emissions; administrative fines for environmental offenses; other payments related to compensation for damage to the environment.

The finances of the Republican Fund for the protection and restoration of the environment are suggested to direct on the financing of the priority national and regional environmental projects, aimed at the protection, restoration and improvement of the environment, and ensuring environmental safety. Planning and funding for the environmental protection from the fund should be conducted in the order established by the laws of the RK [17].

If the restoration of the environment is considered technically impossible due to the direct instructions of the Environmental Code (harm to atmospheric air or other natural objects) or on the basis of conclusion of independent experts, nature users make environmental contributions to the Republican Fund for the protection and restoration of the environment.

Separate environmental problems are associated with the depletion of the natural potential of the country. Land fertility, water and biological resources continue to decline; forests, mountains and other ecosystems continue to degrade.

According to the Minister of Environmental Protection of Kazakhstan Nurlan Kapparov global warming in Kazakhstan is faster than the global average. By the late 20th century, the area of glaciers in the Tien Shan has decreased by 25% – 35%. This situation can be result of the fact that most of the glaciers will be about to melt by 2050. This situation poses a grave threat to water supply in agriculture, industry and population of our country. Even nowadays, the water deficit in Kazakhstan is more than 20%. In the future, with the growth of consumption and climate change, the deficit will increase.

Many politicians, including the Minister of Environment of the RK Mr. Kapparov and Akim of Astana I. Tasmagambetov advance the idea on the establishment of the world's first regional environmental center under the auspices of UNESCO in Almaty which will be focused on studying the deglaciation around the world. This issue is very important, because we are the part of the global world, and we can not ignore the fact that fresh water will be the most valuable resource in the near future [18].

The deglaciation could lead to environmental

disaster, as melting of snow and ice can cause flooding of coastal areas and islands, flooding and landslides, especially in mountainous areas, and all of this, in turn, can accelerate the rate of climate change.

#### Ecologization of society

Ecologization of society is the process of forming a system of views of society aimed at achieving harmony with nature. Its implementation must be carried out through the development of environmental education and training, scientific maintenance, ecological propaganda and public participation [19, P. 31-35].

The following steps are necessary for the development of environmental education in Kazakhstan: the creation of a system of continuous environmental education through the application of environmental and sustainable development issues in the curriculum at all levels of education; training, retraining and advanced training in the sphere of ecology for all levels of compulsory and supplementary education; state support for environmental education.

The distribution of environmental information to the public is very important in the process of solving issues of ecological safety maintenance. In this work the central, regional and district media should be involved.

At the same time it is necessary to take measures to improve the quality, efficiency and relevance of the material submitted. Public authorities must highlight current environmental problems in the mass media [20, P. 36-39].

Considering the effectiveness of participation of all concerned citizens in solving environmental problems, public authorities should ensure appropriate access to environmental information, make decision in the sphere of environmental protection. A special role should be given to the promotion of healthy lifestyle in harmony with nature, the development of ecological tourism.

In accordance with the obligations under the international conventions the potential of environmental non-government organizations should be directed to solve environmental problems through the enhancement of social control of public environmental assessments, participation in forming public opinion on the issues of improving the quality of the environment [21, P. 27].

Legal implications of the changes adoption are: legal support to the priority of restoration of the

environment deteriorated as a result of unlawful pollution, in order to create favorable environmental conditions for individuals; creation of a clear system of legal regulation of nature users' liability for environmental violations, taking the peculiarities of harm caused to the environment into account.

Socio-economic implications of the Draft Law adoption are: improvement of environmental situation in the territory of the RK; legal protection for individuals in the case when their health or property is harmed by a lawful environmental pollution.

#### References

1. The Constitution of the RK, dated August 30, 1995 (as amended and supplemented as of 02.02.11).
2. The Code of the RK № 212-III "Environmental Code of the Republic of Kazakhstan", dated January 9, 2007 (with amendments as of 24.12.2012).
3. The Law of the RK № 175-III "On specially protected natural territories", dated July 7, 2006.
4. The Law of the RK № 219-I "On radiation safety of the population", dated April 23, 1998, as amended.
5. The Law of the RK "On Subsoil and Subsoil Use" № 291-IV, dated June 24, 2010 (with amendments as of 26.12.2012).
6. The Water Code of the RK № 481-II, dated July 9, 2003 (as amended as of 24.12.2012).
7. The Forest Code of the RK № 477-II, dated July 8, 2003 (as amended as of 10.07.2012).
8. The Land Code of the RK № 442-II, dated June 20, 2003 (with alterations and amendments as of 08.01.2013).
9. The Decree of the President of the RK № 1241 "On the Concept of Environmental Security of the RK for 2004-2015", dated December 3, 2003.
10. The Code of the RK № 99-IV "On taxes and other obligatory payments to the budget", dated December 10, 2008 (Tax Code) (as amended as of 06.03.2013).
11. The Code of the RK № 155-II "On Administrative Offences", dated January 30, 2001 (as amended as of 06.03.2013).
12. The Declaration "On Environment and Development", dated June 14, 1992, Rio de Janeiro.
13. Kalinichenko V.T. Environmental Code of France. // Environmental Law. 2010. – № 6. – P. 44-46.
14. The World Summit "On Sustainable Development "Rio +10", dated from August 26 to September 4, 2002, Johannesburg, South Africa.
15. Brinchuk M.M. Environmental Law. The textbook, 4th edition. – Moscow, 2010, P. 32-39.
16. <http://www.zakon.kz/4530308-jeksperty-vko-proanalizirovali-prichiny.html> (the experts analyzed the causes of VKO ecological illiteracy).
17. <http://www.zakon.kz/4447337-kazakhstan-nastaivaet-nasozdani.html> (Kazakhstan insists on the establishment of a Regional Environmental Centre in Almaty).
18. <http://www.zakon.kz/4551435-kazakhstan-dolzhen-stat-regionalnym.html> (Kazakhstan has become a regional center of technology exchange between Europe and Asia).
19. Hohlyavin. S.A. French Environmental Code and rules of financial nature ensuring its implementation with waste management. // Environmental Law. – 2005. – № 3. – P. 31-35.
20. Brinchuk M.M., Rednikova T.V. The Swedish Environmental Code. // Environmental Law. – 2010. – № 6. – P. 36-39.
21. Dubovik O.L., Ivanova A.L., Kalinichenko V.T., Rednikova T.V., Reriht A.A. General issues of European environmental law: the principles and regularities of its development and formation. // Environmental Law. – 2007. – № 5. – P. 27.