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## LEGAL BASIS OF ACCESSING AND OBTAINING ENVIRONMENTAL INFORMATION IN KAZAKH LAW

Serikkaly TINYBEKOV\*

Roza EREZHEPKYZY\*\*

### Abstract

Since the process of industrialization, environment problems have caused and still been causing serious results all around the world. That's why, today it has become one of our priorities to save the world, which we will bequeath to next generations, with its own natural environment as we are getting industrialized. If the society with all of its individuals becomes sensitive about getting sustainable development, it forces the government and industrial establishments to take action to protect the environment. Active and effective participation of citizens and institutes of civil society in concerning environmental protection requires decision-making processes to be one of important preconditions for a sustainable development of modern international community. The public can effectively participate in the solution of environmental problems when it is informed on existing threats to environment and health of citizens. Both NGOs and governmental organizations should get the responsibility about mentioned briefing. If the government creates appropriate conditions for the NGOs to develop and to be active, it may trade on their effective power for informing the public and making some protective environment actions. It is important to create conditions for information on inquiry from government, and also the organizations and the enterprises which activities

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\* Prof. Dr., Head of the Department of Civil Law and Civil Procedure, Labor Law of the Al-Farabi Kazakh National University. Member of the Forum of Lawyers of Almaty, Kazakhstan, [serikkaly@rambler.ru](mailto:serikkaly@rambler.ru).

\*\* PhD. candidate, Labor Law of the Al-Farabi Kazakh National University, Kazakhstan.

have or could have a negative impact on the environmental situation.

**Keywords:** Environmental regulations, environmental protection, Kazakh law, accession environmental information, ecological rights and duties.

## Özet

### Kazak Hukukunda Çevresel Bilgiye Ulaşmanın Hukuki Temelleri

Sanayileşme ile birlikte çevre sorunları, sanayileşmiş ülkelerden başlayarak bütün dünyada ciddi sorunlar doğurmuş, doğurmaya da devam etmektedir. Bu sebeple, sanayileşmeyi gerçekleştirirken gelecek kuşaklara miras bırakacağımız dünyayı, doğal çevresiyle koruyup kollamak insanlığın en büyük önceliklerden biri olmuştur. Sürdürülebilir bir kalkınmayı başarabilmek için toplumun her kesiminin duyarlı olması, hükümetleri ve sanayi kuruluşlarını çevreyi koruma önlemlerini almaya zorlamalıdır. Çevreyi korumaya vatandaşların ve sivil toplum kurumlarının etkin ve etkili iştiraki, karar verme sürecini, modern milletler arası toplumun sürdürülebilir kalkınması için önemli ön koşullardan biri olarak öngörür. Çevreye ve vatandaşların sağlığına yönelik var olan tehditler mevzuunda bilgilendirildiği vakit, halk, çevre sorunlarının çözümüne etkili biçimde iştirak edebilir. Söz konusu bilgilendirme, bir yandan kamu kuruluşları tarafından, öbür yandan sivil toplum kuruluşlarınınca üstlenilmelidir. Hükümetlerin sivil toplum kuruluşlarının gelişmesi ve faaliyet göstermesine uygun bir ortam yaratması, çevresel konularda halkın bilgilendirilmesinde ve bazı koruyucu çevre faaliyetleri gerçekleştirmede onların etkin gücünden yararlanmayı mümkün kılabilir. Hükümetten ya da aynı zamanda faaliyetleri çevresel duruma olumsuz tesir eden veya edebilecek teşkilatlar ve işletmelerden gerektiği zaman bilgi elde etmek için uygun ortamı teşkil etmek önemlidir.

**Anahtar Kelimeler:** Çevre için yasal düzenlemeler, çevre koruması, Kazak hukuku, çevresel bilgiye ulaşma, çevre hakları ve ödevleri.

Access to environmental information is an essential element of the mechanism of environmental protection. Currently, the idea of formation of the ecology consciousness in the society gains significant importance, and people's awareness about their rights and responsibilities in the sphere of ecology protection is considered to be one of major tasks to achieve these goals. Therefore, free access to the information about environment represents an essential element

of the mechanism of environmental protection established in the law. Necessary condition of involvement of the public in adoption of ecologically significant decisions and growth of ecological consciousness of the population is providing guarantees of availability of ecological information. The Republic of Kazakhstan has no uniform law on access to information, and this sphere is regulated by various regulations. Need for the special law regulating access of citizens to information, matured long ago, however its acceptance is postponed.

The laws in force in the Republic of Kazakhstan are the norms of the Constitution, laws corresponding to it, other regulations, the international contractual and other obligations of the Republic, as well as regulatory decisions of the Constitutional Council and the Supreme Court of the Republic.

The Constitution has supreme legal force and direct effect on the entire territory of the Republic. International treaties ratified by the Republic, have a priority before its laws and are applied directly, except cases when from the international treaties follows that its application requires the publication of the law.

All laws, and international treaties whose participant is the Republic, are published. Official publication of the regulations concerning the rights, freedoms and duties of citizens, is an imperative for using it. Thus, the right to information is a constitutional law of citizens of the Republic of Kazakhstan (hereafter RK). Article 18, part 3 of Constitution of the Republic of Kazakhstan says:

“State bodies, public associations, officials and mass media are obliged to provide to each citizen opportunity to study documents, decisions and information sources concerning his rights and interests”.

According to Article 20 of item 2 of the Constitution of RK “everyone has the right to receive and extend freely any information, not forbidden law in the way.<sup>1</sup> Thus, the legislation fixes opportunity to receive and extend information to every individual living in Kazakhstan country, not only the citizens of

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1 The constitution of the Republic of Kazakhstan, adopted on a republican referendum on August 30, 1995//Inquiry legal system the Paragraph, 2013.

Kazakhstan. Besides, based on the content of the Law “About an Order of Consideration of Addresses of Physical and Legal Entities” (Art. 3) treatment can be made by individuals and legal entities.<sup>2</sup>

The main normative legal act defining the mechanism of realization of the right to access to information is the Law of the Republic of Kazakhstan of January 12, 2007 No. 221-III “About an Order of Consideration of Addresses of Physical and Legal Entities”. This law regulates the general procedure for processing applications, contains definitions of basic concepts, rights and obligations of the parties of social relations connected with the filing and consideration of physical and legal persons in order to realize and protect their rights, freedoms and legitimate interests.<sup>3</sup>

The issues of public access to environmental information have been reflected in a number of international environmental conventions ratified by the Republic of Kazakhstan. The most important one is the Convention of the UN Economic Commission for Europe on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (hereinafter the Aarhus Convention).

Kazakhstan ratified this international legal document in 2000. The Convention sets strict requirements for the work of state bodies and officials with public requests for environmental information that must be respected in Kazakhstan. The definition of “environmental information” given in paragraph 3 of Article 2 of the Aarhus Convention, and covers the following types of information:

- about a state of environment, including its separate elements (air, water, the earth, the soil, landscapes and natural objects, the biological diversity,

2 The law of the Republic of Kazakhstan of January 12, 2007 No. 221 “About an order of consideration of physical and legal entities”//Inquiry legal system the Paragraph, 2013

3 The law of the Republic of Kazakhstan of January 12, 2007 No. 221-III “About an order of consideration of physical and legal entities”. // Inquiry legal system Paragraph, 2013

genetically modified organisms, etc.) and their interaction;

- about factors of impact on environment (polluting substances, noise, radiation, etc.);

- about activity or measures, including policy, the legislation, programs and the plans, capable to make impact on environment;

- about a state of health and safety of people, objects of culture and buildings in connection with influence or potential impact on them ecological factors.<sup>4</sup>

According to the Aarhus Convention, a condition of all elements of environment, and also factors, activity or measures which influence or can influence environment elements, are considered as ecological information. The Aarhus Convention imposes the following duties on government bodies:

- to conduct collecting ecological information,
- to provide a free access to ecological information,
- actively to extend certain types of ecological information.

Similar definition of the concept “ecological information” is given in point 1 of article 159 of the Environmental Code.

Environmental information is public, except for the cases provided by laws of the Republic of Kazakhstan. Access to separate data and the data making public environmental information, is carried out by their granting by inquiries of physical and legal entities, distributions in mass media, in special editions, available on the Internet, as well as using other public information and communication tools.

Access to the state information resources (information databases), environmental information is provided by means of formation and maintenance of public registers and inventories of environmental information. Providing

4 The convention on access to information, participation of the public in decision-making and access to justice on the questions concerning environment (the Aarhus convention)//Inquiry legal system the Paragraph, 2013

access to documents and the information resources containing data and data with limited access is carried out in an order established by the legislation of the Republic of Kazakhstan.

Environmental information includes information and data about:

- 1) state of the environment and its objects;
- 2) the factors impacting on the environment, including its pollution;
- 3) program, administrative and other measures which have or may have an impact on the environment;
- 4) environmental regulations and environmental requirements for economic and other activities;
- 5) planned and implemented measures to protect the environment and their financing;
- 6) activities affecting or likely to affect the environment, the decision making process and the results of inspection of environmental inspections on it, including the consideration in this calculation, analysis and other information relating to the environment;
- 7) impact of a state of environment on health, safety and conditions of accommodation of the population, objects of culture, buildings and constructions.

Environmental information can be expressed in written, electronic, audiovisual or other form. Activities of government bodies and other legal entities for formation and distribution of environmental information are regulated by article 160 of the Environmental Code, according to which:

Collecting, the account, storage and distribution of ecological information by government bodies and other legal entities are carried out for information support of activity of government bodies, planning and performance of actions for environmental protection and realization of the right of citizens on favorable

for life and health environment. The ecological information which is subject to obligatory collecting, the account and storage by government bodies and other legal entities, is defined by the legislation of the Republic of Kazakhstan.

Mandatory inspection and accounting specially authorized government bodies subject to information planned and carried-out activity which can make considerable impact on environment, and also about any emergency situations of natural and man-made character posing serious threat for environment, life and population health are subject to obligatory check and account.

In order to systematize the environmental information and improving access to public bodies form and maintain electronic inventory of environmental information.

Public authorities in accordance with their competence spread by placing online and use other public information and communication tools following types of environmental information:

- 1) reports on a state of environment;
- 2) projects and texts of regulations and international treaties concerning environmental protection;
- 3) projects and texts of the documents concerning a state policy, programs and plans in the field of environmental protection;
- 4) reports on results of control and inspection and law-enforcement activity in the field of environmental protection;
- 5) information referred to the list of basic e-government services in the field of environmental protection.

For distribution of environmental information government bodies can attract individuals and legal entities in an order provided by the legislation of the Republic of Kazakhstan about government procurements and the state

social order.

Centralized data collection, accountant and storage of environmental information are carried out by the State fund of environmental information. Maintaining the State fund of environmental information is carried out by the organization subordinated to authorized body in the field of environmental protection. Information resources of the State fund of environmental information include materials and documents:

- 1) represented by government bodies and legal entities;
- 2) transmitted by individuals and legal entities on a voluntary basis.

The structure of the State fund of environmental information includes the following types of environmental information:

- 1) inventories of natural resources;
- 2) register of emissions and transfer of pollutants and other registers of environmental information;
- 3) list of ecologically dangerous productions;
- 4) data of environmental monitoring;
- 5) materials of an assessment of impact on environment and the state environmental expertise with the consent of the customer of planned activity;
- 6) legal and technical regulation in the field of environmental protection and use of natural resources;
- 7) reports concerning results of research and development works performed / undertaken in connection with environmental protection;
- 8) scientific and technical publications in the field of ecology protection technologies;
- 9) other sources and the documents containing environmental information.

It is proposed that a National Ecological Atlas will be created in Kazakhstan. It will represent a comprehensive scientific reference collection of

cartographic materials. The Atlas is considered to become an open and reliable source of updated environmental information. An authorized state body of the Republic of Kazakhstan in the field of environmental protection (currently it is the RK Ministry of Ecology) shall be responsible for proper organization of the activities associated with the development and publication of the National Ecological Atlas.

Physical and legal entities have the right of a free access to public state information resources of environmental information. Government bodies, and also the officials who are carrying out the state functions, or the physical and legal entities providing to the population on the basis of public contract services, concerning to environment, are obliged to provide open access to ecological information, including requests from individuals and legal entities.

Other physical and legal entities that are carrying out activity in the territory of the Republic of Kazakhstan are obliged to provide the environmental information relating to impact on life and health of citizens by inquiries of persons. Physical and legal entities have the right to obtaining environmental information from persons, in a required form if there are no bases to provide it in other form.

In cases when the government body does not hold the environmental information, the received inquiry will be redirected to competent government body in the terms established by the legislation of the Republic of Kazakhstan.

Deadlines and procedures for providing environmental information government bodies are established by the legislation of the Republic of Kazakhstan on administrative procedures and on an order of consideration of addresses of citizens. Physical and legal entities provide required environmental information no later than one month from the date of receiving inquiry.<sup>5</sup>

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5 The code of the Republic of Kazakhstan of January 9, 2007 No. 212-III “Environmental code of the Republic of Kazakhstan” (with changes and additions in 24.12.2012)//Inquiry legal system the Paragraph, 2013.

Access to the environmental information relating to procedure of an assessment of impact on environment and decision-making process on business and other activity, is provided in an order established by authorized body in the field of environmental protection. Rules are developed on the basis of the Environmental Code of the Republic of Kazakhstan to determine the content and access to the environmental information relating to procedure of an assessment of impact on environment of all interested individuals and legal entities in the form of public associations (further - interested persons) and their participation in decision-making process on the business and other activity. Apply only to the period of carrying out the state environmental review of the project (pre-design) documentation on the business activities, relating to an assessment of impact on environment (further - the EIA project). Information relating to procedure of an assessment of impact on environment and to decision-making process on business and other activity includes materials of the state environmental expertise:

- 1) EIA project;
- 2) the conclusions of external experts on the EIA project;
- 3) the protocol of public hearings according to the EIA project;
- 4) written addresses of interested persons and according to the EIA project;
- 5) conclusion of the state environmental assessment.

Thus materials shouldn't contain a confidential information. The initiator of business and other activity publishes information in special editions in the field of ecology and on the website of the Ministry of Environmental Protection of the Republic of Kazakhstan about the direction of the project EIA to state environmental review. Information has to contain the following data:

- 1) name, legal address, location, phone of the initiator of business and other activity;
- 2) EIA project name;

3) start date and period of implementation of the state environmental assessment;

4) the name, the address, phone of the government body which is carrying out the state environmental assessment.

According to the legislation, the authorized body within 15 days give a written response indicating the time and place where you can learn the material. The initiator of business and other activity presents to authorized body project (pre-design) documentation not containing a confidential information for access to interested persons. Interested persons can present in writing form the offers and remarks to authorized body, concerning the EIA project. Offers and remarks in writing form have to contain the following data:

1) surname, name, middle name, postal address, signature;

2) for the legal entity - name, the postal address, reference number and date, the address has to be signed by the head;

3) the EIA project name, and the list of materials of the state environmental assessment which was introduced to citizens and public associations;

4) a copy of a base to obtain information;

5) reasonable offers, remarks.

The authorized body, in accordance with law, within 15 calendar days reviews the application and gives the answer. In a case when additional studying is necessary, term of consideration can be prolonged no more than for thirty calendar days, with the notification of the applicant within three calendar days.

In providing environmental information can be refused according to article 167 of the Environmental Code of the Republic of Kazakhstan.<sup>6</sup>

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6 The order of the Minister of environmental protection of the Republic of Kazakhstan of July 25, 2007 No. 238-p “About the approval of rules of access to the environmental information relating to procedure for assessing of impact on environment and decision-making process on business and other activity”//Inquiry legal system the Paragraph, 2013.

Providing environmental information to physical and legal entities it can be refused on the following bases:

- 1) the request is formulated in general terms and does not establish those facts and data that is requested by the applicant;
- 2) the absence of the requested information;
- 3) the request relates to information and data with restricted access in accordance with the laws of the Republic of Kazakhstan.

Refusal in providing environmental information goes to the applicant not later than one month from the date of its receiving. Refusal is provided in writing form with the indication of the reasons and the bases for refusal, opportunities for its appeal by the applicant, and also in the cases provided in point 4 of article 165 of the Environmental Code, includes the notice of the redirection of the received inquiry to competent government body.

4) Refusal in granting, not granting, providing incomplete or unreliable environmental information, and also illegal reference of public environmental information to information with limited access can be appealed in higher government body and (or) to the official or in court.<sup>7</sup>

As the authorized organizations providing environmental information can take the payment which shouldn't exceed the actual expenses for copying, searching and information preparation. The payment raised by government body for providing environmental information, is listed on a code of the income of the relevant budget of government body. Providing environmental information by government body by means of the public state electronic register and the inventory of ecological information is free of charge.

In the case of environmental information, not only for its content but also the form of the provision, The Aarhus Convention and the Environmental

<sup>7</sup> The code of the Republic of Kazakhstan of January 9, 2007 No. 212-III "Environmental code of the Republic of Kazakhstan" (with changes and additions in 24.12.2012)//Inquiry legal system the Paragraph, 2013.

Code provide various forms in which environmental information is provided to the public. It can be documented on papers, on computer files, and also as photos, illustrations, video and audio recordings and other material forms of information.

In many cases the form of required information has essential value for the applicant, and he can demand to provide it in a certain form. So, in modern conditions information work is more and more conducted with information in electronic form that replaces with itself a turn of documents on papers.

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