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**Mechanisms to protect the right to a favorable environment***(Eurasian National University after L.N.Gumilev)*

The ecological situation in the Republic of Kazakhstan is at a low level, therefore, it is necessary to strengthen the implementation of mechanisms to protect the right to a favorable environment properly. The article analyzes the mechanisms to protect the right to a favorable environment, which are regulated in the Republic of Kazakhstan.

**Keywords:** mechanisms, the right to a favorable environment, the rights of citizens.

A favorable environment is the environment, the condition of which ensures environmental safety and public health, biodiversity conservation, pollution prevention, sustainable functioning of ecological systems, reproduction and rational use of natural resources [1].

The right of the citizens to favorable environment results from the sense and content of the statutory provision contained in Clause 1 of Article 31 of the Constitution of the Republic of Kazakhstan, which establishes that «the state shall set an objective to protect the environment favorable for the life and health of the person.» [2] This constitutional provision is included in the section of the fundamental law stipulating the rights and obligations of the individual and citizen, and therefore its literal interpretation allows concluding that such right of the individual and citizen is the constitutional right to be secured by the state by all legal means and remedies.

This constitutional provision was further included in the RK Environmental Code, specifically Article 13 expressly stipulates the right of individuals to environment which is favorable for their life and health». It should be noted that the right to favorable environment corresponds to the obligation of the state (government authorities and officials), as well as entities and individuals to make all efforts to preserve and restore natural environment.

Differently worded provisions of the right to favorable environment are also contained in the international legal acts, e.g. the African Charter on Human and Peoples' Rights (1981), the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) (1969), the Declaration of Fundamental Rights and Freedoms adopted by the European Parliament (1989), [3] i.e. this legal institute is not a novel of the constitutional law.

The right to a favorable environment is one of the basic constitutional rights of a person, which belongs to the category of environmental rights. By constitutionalization time is right to apply to the most recent "generation." It was first proclaimed in the Spanish Constitution of 1978 and widely spread only in the late 1980s and early 1990s, mainly in the constitutions of post-socialist countries. The right to a healthy environment corresponds to the duty of all individuals and legal entities, as well as the state. Bodies to take all possible measures to preserve the environment.

Protection of the right to a favorable environment is most effective when; Association of citizens in groups, public environmental associations, to which the legislation provides a fairly wide range of powers in this area. At the same time, as the study shows, in Kazakhstan there is a distrustful, cautious attitude toward public groups, which is reflected in legislation that provides for increased reporting requirements for non-profit organizations, and also contains a large list of opportunities for relevant bodies to initiate suspension and termination of activities; Public associations; It is therefore proposed to strengthen the social and political; Activities of public environmental associations; With security; Their representation, in the legislative bodies of power, which will allow them to influence the adopted laws in the field of environmental protection and nature management [4].

The main function of executive bodies, including in the sphere of observance and protection of the right to a favorable environment, is to ensure the implementation of the legislation of the Republic of Kazakhstan, but in practice this function is either implemented in. Insufficient, or not implemented at all, which, it is confirmed, is a deplorable state of the environment in our country. In this connection, the control activity is of particular importance: a) the executive bodies themselves are responsible for

observing the environmental legislation by economic entities and for timely and complete execution of issued power orders, b) the prosecutor's office for compliance with the legislation by the executive authorities, as well as supervision of the observance of rights And freedoms of a person and citizen by executive authorities, c) the President as guarantor of the Constitution, human and civil rights and freedoms and the Government for lawfulness Stu and expediency of actions and aktovyrganov executive power [5].

The population of our country does not take environmental issues in terms of citizens' rights and duties of the state. At the same time, the right to a favorable environment is collective, which means that its violation affects the interests of a very large group of people, and the adverse consequences of its violation can be too difficult to individualize. All this is the reason for a very small number of citizens' appeals to the Commissioner, for human rights in the Republic of Kazakhstan, for the protection of their fundamental environmental law. It is necessary to strengthen the educational activity of the Commissioner in the sphere of environmental rights of citizens, so that the population of the country realizes that a favorable environment is their right, which, like other rights, must be actively defended.

It seems expedient to provide the Ombudsman with a legal one, since most proposals submitted to the relevant bodies, as well as their implementation, are delayed for a very long time [6].

Analysis of judicial practice in the field of protecting the rights of citizens to a favorable environment. This leads to the adoption of unlawful judgments and protracted-protection of citizens' rights to a favorable environment, since applicants are forced to apply to higher courts, appealing against decisions. Often, to restore the violated right only in the cassation or supervisory instance. And in the case when the action of the act complained of by the court is not suspended, delaying the appeal process for a long period is fraught with serious negative consequences for the environment. Increase the effectiveness of the courts, as well as periodic qualifications for the development of skills in the field of environmental protection, familiarization with innovations in the field of environmental legislation and scientific developments [7].

Taking into account the primary role of the Constitutional Court of the Republic of Kazakhstan in protecting the foundations of the constitutional order, fundamental rights and freedoms for people and citizens (including the constitutional right to a favorable environment), the Constitution of the Republic of Kazakhstan offers the right to give the Constitutional Court the right to give binding orders Expert opinions of draft laws that affect the rights and freedoms of citizens for compliance with the provisions of the Basic Law, which should be stat. A powerful barrier in the adoption of unconstitutional regulatory legal acts that violate the right to a favorable environment [8].

Environmental human rights instruments shall include mechanisms stipulated in the international legal acts which the Republic of Kazakhstan joined. One of such key acts is the Aarhus Convention[9], imposing express obligations on participating countries to ensure the rights of individuals to favorable environment. Thus the Convention envisages a necessity: to provide full public access to information, public involvement in environment-related decisions and development of the state environmental policy, programs and plans; to provide public access to justice on environmental issues; to support public organizations engaged in environmental protection.

Certain obligations of the Republic of Kazakhstan regarding protection of environment, rational use and restoration of natural resources arise from the provisions contained in many other international legal acts.[10]

Currently major users of natural resources, industrial and professional associations with the participation of international experts have prepared specific proposals for reforming environmental legislation, acceptance of which would improve both investment climate in the country and meet the objective of the Republic of Kazakhstan to ensure favorable environment for human life and health.

The proposed amendments to the environmental legislation relate to the following issues:

First, we undertook a comprehensive review and revision of the terms and definitions used in the environmental legislation in order to streamline them and accurately define their legal status, specifically those sub-institutes pertaining to legal consequences that might arise.

Secondly, there were proposed amendments to reduce administrative barriers for issuance of environmental emissions permits. Specifically, it was proposed to introduce a «one window» principle, a presumption of issuance of environmental permits, reduction of the term of issuance, exclusion of a number of documents required upon filing applications for environmental permits, and separation of the processes of review, endorsement and approval into individual procedures.

Thirdly, there is introduced legal regulation of a number of processes such as reconsideration of applications for environmental emissions permits, public hearings, setting terms for the use of natural resources. There are filled gaps in the legislation, and obligations of the environmental authorities.

Fourthly, there have been streamlined the issues of responsibility of the users of natural resources for environmental damage. The institute of responsibility was significantly revised and redrafted. In particular, triple responsibility for environmental offence is excluded and measures to bring the environmental legislation into conformity to general principles of law and principles of branches of law. Compensation for harm caused to the environment is set as a real priority. Grounds for violation of the principle of equality of all before the law and uniformity of law across the territory of the Republic are removed. It is proposed to establish a special national environmental fund to accumulate environmental payments by the users of natural resources as compensation for the harm caused to the environment, and to allocate them on the protection and restoration of natural resources.

Fifthly, the role of the community and non-government organizations in the solution of environmental issues enhances. E.g. it is proposed to introduce the institute of environmental ombudsman who could assist in mediation resolution of environmental issues; the role and significance of environmental audit also enhances.

Sixthly, specific measures are proposed to settle such issues as gas flaring and instantaneous high emissions. It is proposed to introduce the institute of «urgent necessity» into the environmental law and legislation.

Huge work has been performed and significant resources have been allocated and expended; the community of the users of natural resources and key players in the Kazakhstan economy advanced a consolidated view. It should be noted that the public at large and business are seriously concerned about the current environmental regulation. Meanwhile this initiative of the users of natural resources and independent experts has been being reviewed by the governmental authorities for almost two years, and currently no «light can be seen at the end of the tunnel». No response, in our opinion, does not meet the imperative of the time and impedes the state from achieving the objective to ensure protection of the environment favorable for the individual and citizen.

To sum up, it should be noted that given the ambition of the Republic of Kazakhstan to be included in the list of 50 advanced countries of the world, essentially will ensure the right of individuals to favorable environment, as stipulated by the constitutional rule and environmental legislation. Our environment should service to satisfy the needs of the society and should be preserved for future generations of our country, to attain this objective a balance of consumption of natural resources and protection of the environment is to be maintained. This objective is attainable, if the state, users of natural resources and individuals shall within the framework of social partnership and responsibility protect the environment [11].

## References

1 Ecological Code of the Republic of Kazakhstan (with amendments and additions as of April 28, 2016) point -37.

2 The Constitution of the Republic of Kazakhstan adopted by the national referendum, August 30, 1995.

3 See Article 39 of the Constitution of the Azerbaijan Republic of November 12, 1995; Article 46 of the Constitution of the Republic of Belarus of March 15 1994; Article 48 of the Constitution of the Kyrgyz Republic of June 27, 2010 года; Article 37 of the Constitution of the Republic of Moldova of June 29, 1994; Article 42 of the Constitution of the Russian Federation of December 12,

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9 The Convention was signed by 35 countries in Aarhus, Denmark, on June 25, 1998 at the 4th Ministerial Conference "Environment for Europe". Ten out of these countries are from the post-Soviet territory: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan, Turkmenistan and Ukraine

10 E.g.: The Vienna Convention for the Protection of the Ozone Layer, March 22, 1985 (*the Republic of Kazakhstan joined it on September 30, 1997*); the Montreal Protocol on Substances that Deplete the Ozone Layer, September 16, 1987 (*the Republic of Kazakhstan joined it on September 30, 1997*); the Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, June 29, 1990 (*the Republic of Kazakhstan joined it on May 7, 2001*); the Convention on Biological Diversity adopted at the UN Conference in June 1992 (*the Republic of Kazakhstan approved it on August 19, 1994*); the United Nations Convention to Combat Desertification, June 17, 1997 (*the Republic of Kazakhstan ratified it on July 7, 1997*); the Kyoto Protocol to the United Nations Framework Convention on Climate Change, December 11, 1997 (*the Decree of the President of the Republic of Kazakhstan on Signing the Kyoto Protocol to the United Nations Framework Convention on Climate Change dated March 12, 1999*); the Stockholm Convention on Persistent Organic Pollutants, May 22, 2001 (*the Republic of Kazakhstan ratified it on June 7, 2007*); the Framework Convention for the Protection of the Marine Environment of the Caspian Sea, November 4, 2003 (*the Republic of Kazakhstan ratified it on December 13, 2005*) etc.

11 Yelyubayev Z.S. Article the Constitutional Right of the Citizens to Favorable Environment/ Zakon.kz

**Смагулова А.Е.**

**Қолайлы ортаға құқықты қорғау механизмдері**

Қазақстан Республикасының экологиялық ахуалы төмен болғандықтан, қолайлы қоршаған ортаға құқықты қорғау механизмдерінің қызметін қадағалауды қажетті деңгейде жүзеге асыру керек. Бұл мақалада Қазақстан Республикасында реттелетін қолайлы қоршаған ортаны қорғаудың механизмдері талданды.

**Түйін сөздер:** механизмдер, қолайлы қоршаған ортаға құқық, азаматтардың құқықтары.

**Смагулова А.Е.**

**Механизмы защиты права на благоприятную окружающую среду**

Экологическая ситуация в Республике Казахстан находится на низком уровне, поэтому необходимо усилить выполнения механизмов защиты права на благоприятную среду должным образом. В данной статье проанализированы механизмы защиты права на благоприятную окружающую среду, которые регулируются в Республике Казахстан.

**Ключевые слова:** механизмы, право на благоприятную окружающую среду, права граждан.

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