

Problems of Development of Environmental Policy and Law in the Republic of Kazakhstan

D. Baideldinov, I. Kuderin and A. Izbasarova

Faculty of Law, Al-Farabi Kazakh National University, Almaty, Kazakhstan

Submitted: Sep 27, 2013; **Accepted:** Oct 31, 2013; **Published:** Nov 6, 2013

Abstract: The Republic of Kazakhstan since independence has paid great attention to the protection of the environment. For these purposes, a number of regulations were adopted. For example, in 1997, three acts in field of environment protection were adopted just, one of which is the Act "On Environmental Protection in the Republic of Kazakhstan." In subsequent years, the Concept of Ecological Safety was adopted. It served as a methodological instrument for the further development of the state of the legal framework for the protection of the environment. This article examines the problems of environmental policy issues across Kazakhstan's independence and which need to be addressed in the present and the future. Reforming of any branch of the law can have their cycles and their patterns. Environmental legislation of Kazakhstan is not exception and has its cycles and its laws. The article highlighted three distinct phases, which are passed through the development of environmental legislation of the sovereign Kazakhstan.

Key words: Environmental policy • Environmental law

INTRODUCTION

During the years of independence the Republic of Kazakhstan has evolved sufficiently developed and systemic legislation, which regulates social relations in the field of environmental protection and rational use of natural resources. On the basis of international environmental conventions ratified by the Parliament, the country adopted the fundamental regulations that create the legal framework for the effective environmental management and optimal activity by the users of natural resources. On December 3, 2003 by the Decree of the President of the Republic of Kazakhstan approved the Concept of Ecological Security, which served as a methodological instrument for the further development of the legal framework of the State Environmental Protection of Kazakhstan [1]. In 1997 three environmental bills have been passed - "On Environmental Protection" in the Republic of Kazakhstan [2], "On Environmental Impact Assessment" [3], "On Specially Protected Natural Territories" [4]. Later laws "On Protection of Atmospheric Air" [5], "On Subsoil and Subsoil Use" [6] and more than three hundred laws and regulations governing the multifaceted aspects of environmental management have been passed.

In 2006, the entire system of environmental law was codified in a single legal act - the Environmental Code of the Republic of Kazakhstan [7]. Environmental Code consists of general and specific parts, which provide independent institutes of environmental law. All of the previous legal acts governing the conduct of environmental standards, environmental impact assessments, environmental audits, environmental control, environmental charges and many other environmental issues, are fully engaged in the Environmental Code. Edition of existing instruments has been revised to meet the current requirements of the Environmental Code. In the environmental law, after the adoption of the Environmental Code, the system of environmental legislation is given the relative order. Despite this, in this branch of the law there are a number of problems related to the issues of further improving the environmental legislation.

Main Part: Problems of reforming any type of branch of law have its cyclical nature and regularity. The environmental legislation of Kazakhstan also has a cyclical nature and regularity. Development of the environmental legislation of the sovereign Kazakhstan has passed through three distinct phases.

The first phase lasts from 1991 to 1997. During this period in the Republic of Kazakhstan there was the process of building independence and developing legislation on the principles of sovereignty of the state. Important laws were adopted. For example, in 1991 - The law of the Kazakh Soviet Socialist Republic "On Environmental Protection in the Kazakh SSR", in 1992 - - the Code "On Subsoil and processing of mineral raw materials", the laws "On social protection of citizens affected by the nuclear tests at the Semipalatinsk test site" and "On social protection of citizens affected by the environmental disaster in the Aral Sea" were adopted, in 1993 - the Forest Code, the Water Code, the Law of the Republic of Kazakhstan "On protection, reproduction and use of wildlife".

Among this acts the most important for the issues of environmental policy is the law of the Kazakh Soviet Socialist Republic "On Environmental Protection in the Kazakh Soviet Socialist Republic", which was adopted on 18 June 1991. The structure of the law consists of 16 chapters, 83 articles. Section I contain the basic terms, definitions and basic principles of environmental protection of the state and indicate the objects to be protected. Section II describes the rights and duties of citizens in the field of environmental protection. Section III details the activities of organs of state power and administration in the field of environmental protection. Also, the law covers such areas as the regulation of the quality of the natural environment, environmental assessment, environmental requirements for economic and other activities, the zone of ecological emergency and environmental disaster, specially protected natural objects.

The second phase lasts from 1997 to 2006. During this period, the next acts were adopted: The concept of "Ecological Security of the Republic of Kazakhstan" on April 30, 1996; Law "On Subsoil and Subsoil Use" on 27 January 1996; Law "On Environmental Impact Assessment" on March 18, 1997; Law "On Environmental Impact Assessment" on March 18, 1997; Law "On Specially Protected Natural Territories" on July 15, 1997; Law "On protection of atmospheric air" on March 11, 2002; Law "On protection, reproduction and use of wildlife" on July 9, 2004; the Land Code of the Republic of Kazakhstan on June 20, 2003; the Water Code of the Republic of Kazakhstan on July 9, 2003.

On January 27, 1996, the President signed the Decree "On Subsoil and Subsoil Use". The decree consists of 10 chapters and 76 articles. The decree contains general conditions of regulation of the relations

of subsoil use and conservation of resources. It also provides an overview of the purposes and objectives of the mining law (Chapter I), determines the competence of state bodies in the field subsoil use (Chapter II), fixes terms, types, subjects, base of a mining rights (Chapter III).

On March 11, 2002, the Parliament of the Republic of Kazakhstan adopted the Law "On protection of atmospheric air". Ambient air is not subject to property rights and therefore the main objective of this is to regulate the relations of air protection and not on its use. The Act sets out the objectives and tasks of the air protection legislation, the competence of public authorities and governments, as well as private citizens and public organizations in the field of air protection. The law consists of 7 chapters, 30 articles.

On March 18, 1997, the Parliament of the Republic of Kazakhstan passed a law "On Environmental Impact Assessment". Its structure consists of 9 chapters, 41 articles. The value of this law is defined by the legal status of the environmental assessment as a special element of environmental management, without a positive conclusion of which any economic activity is not allowed. On July 15, 1997, the Law of the Republic of Kazakhstan "On Specially Protected Natural Territories" was adopted. Its structure contains 24 chapters, 88 articles. Organization of Reserves in Kazakhstan has a long and rich history and is considered as a separate independent Institute for Environmental Law. At the present the country has a significant number of protected areas, their types, endowed with different legal status. This explains the large scope of the law and scope of its regulation.

The most important for this period is the fundamental law of the Republic of Kazakhstan "On Environmental Protection", adopted on 15 July 1997. Its structure consists of 19 chapters, 89 articles. Chapter I sets out the basic terms and definitions used in this Act, determines the objectives of the legislation of the Republic of Kazakhstan in the field of environmental protection. Chapter II establishes the authority of environmental organizations and individuals on a wide set of measures aimed at protecting nature. Of particular importance is Chapter III, in which it is revealed in details a list of the major powers and activities in the field of nature protection of the Government of the Republic of Kazakhstan. Chapter IV establishes the general characteristics of bases and conditions of the right of nature use. The following chapters regulate separate elements of state-legal control mechanism in the field of

ecology. Law concludes with a chapter XIX «International cooperation in the field of environmental protection», which identifies the priority of the general principles of environmental safety. The second stage of the development of environmental legislation of the Republic of Kazakhstan is characterized by the inclusion in the legal regulation of social relations of market-based mechanisms based on the institution of private property.

The third stage began in 2006 - to the present. During this period, there were adopted: in 2003 - the Land Code, the Water Code, the Forest Code, in 2004 - the Law "On protection, reproduction and use of wildlife", in 2006 - the Law of the Republic of Kazakhstan "On Specially Protected Natural Territories", in 2007 - the Environmental Code of the Republic of Kazakhstan, in 2010 - the Law of the Republic of Kazakhstan "On Subsoil and Subsoil Use".

Major institutional legislative act is the Land Code of the Republic of Kazakhstan, adopted on June 20, 2003. The Code consists of 5 sections, 21 chapters, 170 articles. The law considers the goals and objectives, the principles of the law of the land, structure of lands and land zoning. A significant place in the law is Section II «Ownership of land, the right to use land and other property rights to the land», which regulates a wide range of issues of land use and land ownership.

On July 8, 2003, the Parliament of the Republic of Kazakhstan passed the Forest Code. Its structure consists of 9 sections, 20 chapters and 118 articles. The content of this edition of the Forest Code meets current customer requirements and economic realities of modern Kazakhstan. The Code provides an overview of forest legislation, indicates its task and describes the rights and duties of the users of the forest. Section II reveals the competence of state bodies in the field of management, control, conservation and protection, use of forest resources, reforestation and afforestation. Forest tenure issues, their types, terms, conditions and procedures are regulated in section III. The Forest Code also regulates relations on payment for forest management and forest financing, carrying State Forest Inventory and Forest Monitoring.

The Water Code of the Republic of Kazakhstan was adopted on July 9, 2003 by the Parliament of the Republic of Kazakhstan. It consists of 11 sections, 32 chapters and 146 articles. This legislation has a significant role in regulating water relations. The Water Code defines the object of its regulation, the goals and mandates of the water legislation, gives a description of a water resources of the Republic of Kazakhstan. It defines the competence

of bodies of state power and administration in the field of water relations, participation of citizens and NGOs in monitoring the protection and use of water, control and expertise in the field of protection of water resources, the state water cadaster, state monitoring of water objects. The main purpose of the Water Code is to regulate relations on water use, types, timing and authority for the provision of water to use, rights and responsibilities of users, payment for water use, grounds for termination of water rights.

One of the main sources of environmental law is the Environmental Code of the Republic of Kazakhstan, adopted on January 9, 2007 by the Parliament of the Republic of Kazakhstan. The Code consists of two parts, 9 sections, 47 chapters 326 articles. The General Part of the Code has 27 Chapters that describes the basic concepts and defines the rights and responsibilities of individuals, fully revealed a number of key competences and activities in the field of environmental protection. Also, this part of the code examines the economic regulation of the environment protection and use of natural resources, the types of environmental control, environmental monitoring and inventory. Chapter 17 "The state registration of polluted areas" considers the objectives and principles of accounting polluted areas. A special place in the Environmental Code is section VI «Zones of ecological emergency and environmental disaster», where clearly itemized concept, the declaration of separate territories as zones of ecological emergency or environmental disasters and the features of legal regulation in the areas of environmental emergencies and environmental disasters.

The special part begins with a describing of general provisions on environmental requirements. Chapter 30 provides the establishment of environmental requirements in nearly all types of activities. Chapter 40 gives a detailed description of the environmental requirements for the production and use of potentially hazardous chemical and biological substances, genetically modified foods and organisms. Chapter 42, "Environmental requirements for waste management of production and consumption", defines the types of production and consumption waste (art. 286), the classification of hazardous waste. Of particular importance is Section IX, which considers the liability for environmental harm and the resolution of environmental disputes.

In May 2013 in Astana, the Environmental Forum was organized by the Bar Association in the area of subsoil use with the support and participation of a number of the major oil and gas producing companies. The main subject

of the forum was the draft law "On amendments and additions to some legislative acts of the Republic of Kazakhstan on issues of ecology"... According to this bill developers, which are mainly the Bar Association, raised the question of the introduction of significant changes and additions to the Environmental Code of the Republic of Kazakhstan.

First of all, it should be noted the complexity of the problems addressed by the draft law. In fact, all of the changes and additions to some legislative acts on environmental issues can be grouped into the following legal institutions:

- Institute of issuing permits for emissions into the environment;
- Institute of economic incentives for environmental activities;
- Institute of liability for environmental violations;
- Institute of production and consumption waste.

Under these institutions it has been considered a range of issues that involve changes of the content of the conceptual apparatus, reforming of the functional responsibilities of the special authorized bodies, use of new methods to stimulate economic activity of environmental protection. Proposed novels of the bill for developing of the institution of issuing legal placements are multidimensional phenomena and can be recognized as the profoundly positive. In total developers of the bill proposed to make 223 amendments into the Environmental Code. During the last 7 years there have been made 7 changes and additions into the Environmental Code. And at the present moment 155 Articles of total 323 are set out in the new amended version. It turns out that many of the rules of the Environmental Code and the Environmental Code itself is subject to serious reforming. Does this mean that the next stage of the reforming of environmental legislation has come? Why do we put this question - because each new stage in the development of environmental legislation in the first place means a significant change in the basic act of codification in the field of environmental protection.

In what direction will go the further development of the environmental legislation of the Republic of Kazakhstan?

Today we can formulate two scenarios of development of the environmental legislation. First option. The main doctrine advanced by the leadership of our country is to steer the economy of our state to create a "green economy". This is a complicated technological

scientific innovative and production process. It involves the application of new types of energy resources, the introduction of low-waste and non-waste production, as well as new innovative technologies. In addition to the legal regulation the process itself, in our opinion, can last from 20 to 50 years. Therefore, we consider this option as a very distant prospect. The second scenario. It can be argued that the next stage in the development of environmental legislation will take place under the influence of the factor of interstate integration, in-first, unification of the legislation of states - members of the Customs Union, as a consequence of the creation of a common market of 3 states (Belarus, Russia, Kazakhstan).

On September 23, 2011, the Council of Ministers of Justice - the EurAsEC member states adopted the historic decision from the legal and political points of view. "By this decision the Concept of development of civil law of EurAsEC member states was taken as basis and the Commission of the Council of Ministers of Justice was instructed to begin to draft Principles of Civil Law of states - members of the Eurasian Economic Community (hereinafter the Principles of Civil Law)". (MK Suleimenov, Problems of the unification of civil law in the framework of the Customs Union). Thus, we see how our states, including the Republic of Kazakhstan on the basis of the integration process, actively participated in the creation of a common legal framework for the states of the Customs Union.

CONCLUSIONS

The general laws of development of legal systems have common patterns. It is impossible to develop a single branch of the law without corresponding changes in other areas of law. In our view, if the states of the Customs Union create a unified civil law - this law will not be able to function effectively if it is not backed up by the rules of criminal, administrative and other legislation. For example, the agreement on the effects of free warehouses, the adoption of which has provided the development and adoption of common customs tariff in the three member states of the EurAsEC. It is not difficult to imagine that the Russian capital will also be actively involved in the mineral resources in the territory of the Republic of Kazakhstan. There is possibility of the appearance of new forms of participation of Russian users of natural resources in the territory of Kazakhstan or of Kazakhstani companies on the territory of Russia. In this case the single environmental legislation will contribute to the effective performance of these processes. Thus, it seems

that the 4th stage of the development of environmental legislation will pass in this direction. The challenge of improving of the environmental legislation is to rethink the methodological content of the environmental legislation, the achievement of its internal unity by subjecting a single goal. Despite the general acceptance and application of term "environmental law", this legislation is quite clearly divided into "regulations on the protection of nature" and "regulations on the use of natural resources". They have different mechanisms of regulation of relations of ownership, the right of use, control and responsibility. Conceptual philosophy of the current legislation is that in the one hand, natural resource codes and the laws regulate in the first place the relationship of using of these resources. On another hand, the purpose of environmental laws is to develop control measures, conditions, rules of application of law, which do not deteriorate condition of the environment. The general objective of the state in the field of ecology is maintaining the quality of the natural environment that is conducive to human existence, which should be taken as the basic legal principle in environmental legislation. Its implementation should be achieved in a gradual merging of the fields of laws. Also in realizing of this goal connection should be achieved between natural resources law and investment law. The next problem is to create an appropriate model of economic and social development. Legislation of any state is a formal expression of economic relations and of government policy. Given the level of economic development, the country should identify its own priorities - to create a model of socio-economic development and find ways, methods and means of implementing this model. Setting environmental priority as a basic principle for the state means reorienting or reforming the economy at a different level of quality. For instance, there are states, where exploitation of natural resources is made on the territory of other countries and production of its own resources is reduced, the most environmentally "dirty" industries are transferred outside of their own country, hazardous waste exported for disposal in other States (VM Bekyashev, "International Law", M., 2001). This reorientation of the development model is promoted by economic insecurity and social instability of environmentally exploited nations. It might be positive experience to create of an economic model that takes into account the principle of integrated development of the state and its regions, where the use of natural resources, the development of productive forces, the solution of social problems is subject to the main goal - environmental improvement. The economic transformation based on environmental priorities is

expressed in the implementation of appropriate public policy. Official environmental policy of the republic should be reflected in policy documents - the doctrines, concepts that define the objectives, the means of execution, the powers of the participants, stages of implementation. In the field of environment protection in Kazakhstan there are separate policy documents, for example, the decision of the Government of the Republic of Kazakhstan "On the concept of development and deployment of specially protected natural territories of the Republic of Kazakhstan till 2030", "On the Concept of development of the water sector and water policy of the Republic of Kazakhstan up to 2010" and others.

Foreign legislative experience includes instances where the act of the State Environmental Policy is adopted by the law of the state. For example, the United States adopted the "Act on the environmental policy of the USA" (1969), the Decree of the President of the Russian Federation adopted the Law of Environmental Policy (1994) [8-10]. Perhaps, the Republic of Kazakhstan should also consider the adoption of the Law "On Environmental Policy of the Republic of Kazakhstan".

REFERENCES

1. On the concept of environmental security, Decree of the President of the Republic of Kazakhstan on December 3, 2003, Kazakhstan Pravda
2. On Environmental Protection, the Law of the Republic of Kazakhstan on 15 July 1997. Kazakhstan Pravda. 1997.
3. On Environmental Impact Assessment, the Law of the Republic of Kazakhstan on March 18, 1997, Kazakhstan Pravda.
4. On Specially Protected Natural Territories, the Law of the Republic of Kazakhstan on 15 July 1997, Kazakhstan Pravda.
5. On Air Protection, the Law of the Republic of Kazakhstan on March 11, 2002, Kazakhstan Pravda.
6. On Subsoil and Subsoil Use, the Law of the Republic of Kazakhstan on January 26, 1996, Kazakhstan Pravda.
7. Environmental Code of the Republic of Kazakhstan on January 09, 2007, Kazakhstan Pravda.
8. Brinchuk, M., 2003. Ecological Law in Russia. M., - 670 p.
9. Maishekina, E.S., 2013. Middle-East Journal of Scientific Research, 13 (Special issue of Politics and Law): 102-107.
10. Mukhtarova, E.D., 2013. Middle-East Journal of Scientific Research, 14(4): 502-507.