



**Beibut Shermukhametov,  
Judge of the Supreme Court of  
the Republic of Kazakhstan**

- **Report:**
- *"On judicial practice in civil cases in the field of environmental legislation in the Republic of Kazakhstan in 2014-2015. The changes in the environmental legislation of the Republic"*

**2016, Geneva city**



**June 2014, V session of the meeting of the Parties to the Aarhus Convention (UNECE, the Netherlands). Decision V / 9L «On Kazakhstan's non-compliance with its obligations under the Aarhus Convention".** By 2018 Kazakhstan must improve the legal framework on public access to environmental information and participation in decision-making on the protection of environmental issues. Annual reports on taken measures are needed to be submitted each year to the Compliance Committee of the Aarhus Convention by 2018.





**Kazakhstan - a member and active participant in the United Nations Commission on Sustainable Development;** Interstate Commission for Sustainable Development in Central Asia; regional Eurasian network of the World Business Council for Sustainable Development; CIS Interstate Council for Hydrometeorology; "Environment for Europe" and "Environment and Sustainable Development for Asia", the United Nations Development Program, the World Wildlife Fund (WWF) and other organizations.

International initiative of Kazakhstan - Partnership Program "Green Bridge" (III Economic Forum, Astana, 2010; UN General Assembly, 2011, UN Conference on Sustainable Development "Rio + 20", Rio de Janeiro, 2012).

Kazakhstan, Russia, Kyrgyzstan, Belarus, Mongolia, Georgia, Germany, Latvia and Montenegro signed the Charter of the partnership program "Green Bridge".

More than 60 international treaties of the Republic of Kazakhstan directly or indirectly affect the scope of protection of the environment.





**Paragraph 3 of Article 4 of the Constitution of the Republic of Kazakhstan:** "international treaties ratified by the Republic shall have priority over its laws and be directly implemented except in cases when it follows from the international treaty that for its application it requires a law promulgation".

**Article 2, paragraph 2 of the Environmental Code:** on the priority of international treaties ratified by the Republic of Kazakhstan, over the provisions of this Code.

**Article 11 of the Law "On International Treaties of the Republic of Kazakhstan"** - international treaties are subject to ratification, the implementation of which requires a change in the existing or adoption of new laws; establishing other rules than those stipulated by the laws of the Republic of Kazakhstan and some other.



**The program "Kazakhstan 2030"** - "Kazakhstan should be clean and green country with fresh air and clear water. Industrial waste and radiation would no longer penetrate into our homes and gardens. Our children and our children's children will live a full life in a healthy environment".

VI Congress of Judges of Kazakhstan (2013), President of the Republic of Kazakhstan Nursultan Nazarbayev - "national judicial system should be a reliable guarantee of stability in the society, the rule of law, strict observance of the interests of society and state, the rights and freedoms of Kazakhstan".

Objective: To increase the criterion of "Independence of the courts" of the judicial system by 60 positions in the global ranking of competitiveness.

Message of the Head of State from 14.12.2012, "Strategy" Kazakhstan-2050": a new policy of the established state": the entry of Kazakhstan into 30 most developed countries in the world by 2050.





**Message of President of Kazakhstan Nursultan Nazarbayev:** "100 concrete steps", section II "Rule of law" for the implementation of the 5 institutional reforms in the judicial system.

1. Simplification of the legal proceedings: transition from 5 to 3 courts (first, appeal, cassation).  
Creation of a specialized judicial board for the resolution of disputes involving large investors.

2. International Council with the participation of reputable foreign judges and lawyers at the Supreme Court, implementation of the best international standards, giving advice on the improvement of the Kazakhstan justice.

3. 100 % of audio - and video recording of all processes, electronic document management system.

4. The new Civil Procedure Code.

5. Accountability of Judges, the appeal of citizens of the actions of judges in the Court of the jury at the Supreme Court.





**Statistics, in 2014 - 2015** in Kazakhstan the courts of first instance considered, respectively, 438 and 486 civil cases. So, on the west of the country in connection with oil production, it is mainly discussed the cases of emergency-limit gas flaring and oil spills, in the east - soil and water pollution and waste of industrial facilities, in the south - felling of saksaul.

The Supreme Court was able to develop a uniform approach to the resolution of disputes in the field of environmental protection legislation.

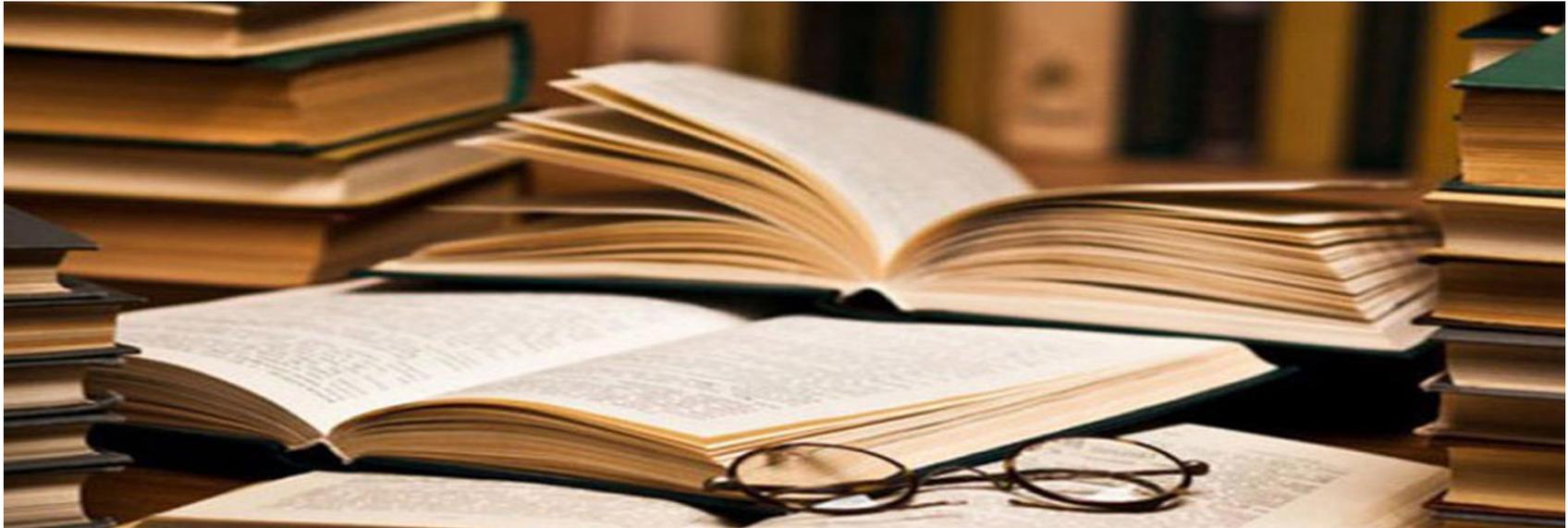




**The Constitution of the Republic of Kazakhstan** proclaims itself a democratic, secular, legal and social state whose highest values are an individual, his/her life, rights and freedoms (article 1, paragraph 1); everyone has the right to judicial protection of their rights and freedoms (Article 13, paragraph 2); the State aims to protect the environment favorable for life and health (article 31 paragraph 1); Kazakh citizens have the right to freedom of association (article 23, paragraph 1).

**Access to justice** in Kazakhstan is guaranteed by the Constitution, the norms of legislation and regulations ratified by the Parliament of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Sphere (Aarhus Convention, Article 9).

Legal entities, environmental associations, citizens may apply to the court for protection of rights and interests protected by law. Waiver of right to appeal to the court is invalid if it conflicts with the law or violates someone else's rights and interests protected by law (Article 8 of the Code of Civil Procedure).



**The Aarhus Convention, Article 4:** public authorities have to provide environmental information on public request taking into account the norms of national legislation.

**Environmental Code, Article 14:** the right of environmental NGOs to receive timely, complete and reliable environmental information.

**Law "On State Secrets" (Article 17), Law "On Access to Information" (paragraph 4 of Article 6)** - information on the state of the environment cannot be kept in secret, there are no restrictions on access to them.





**The change in Article 57 of the Environmental Code:** natural and legal persons shall have the right to appeal against the opinion of the state ecological expertise (Law of April 8, 2016).

November 2015, in the absence of law the economic court of Almaty city is considered the application of the NGO "Green Salvation" to invalidate the conclusion of the state ecological expertise.

**Global Judges Symposium, Johannesburg, South Africa, August 18-20, 2012:** independent judiciary and judicial process is vital for the implementation, development and enforcement of environmental law. Members of the judiciary and those contributing to the judicial process at the national, regional and global levels, are crucial partners for promoting compliance, implementation and enforcement of international and national environmental law".





**Chairman of the Supreme Court Kairat Mami, the judicial community - the initiators of the changes in the judicial system of the country, implementation of norms of international law and the Aarhus Convention in environmental legislation.**

A draft of a new regulatory decision of the Supreme Court was developed on the application of environmental legislation, instead of the obsolete regulatory decree of 16 December 2000.





Government agencies and members of the public are involved in the implementation of the Aarhus Convention in civil society at the national level:

- the authorized body in the field of environmental protection (Ministry of Energy and its subordinate bodies in the regions);
- the judicial system;
- governmental departments;
- legal community;
- community mediators in mediation efforts to resolve disputes between individuals and non-state economic entities;
- the public, citizens, Aarhus Centers and associations;
- independent journalists on environmental issues.





### **International organizations that provide legal assistance:**

- Office of the OSCE programs
- UNDP
- EU Projects ("Support of judicial and legal system in the Republic of Kazakhstan")
- German Foundation for International Cooperation - GIZ,
- German Foundation for International Legal Cooperation - IRZ, - United States Agency for International Development (USAID)
- The Venice Commission, a number of European embassies
- Secretariat of the Aarhus Convention.

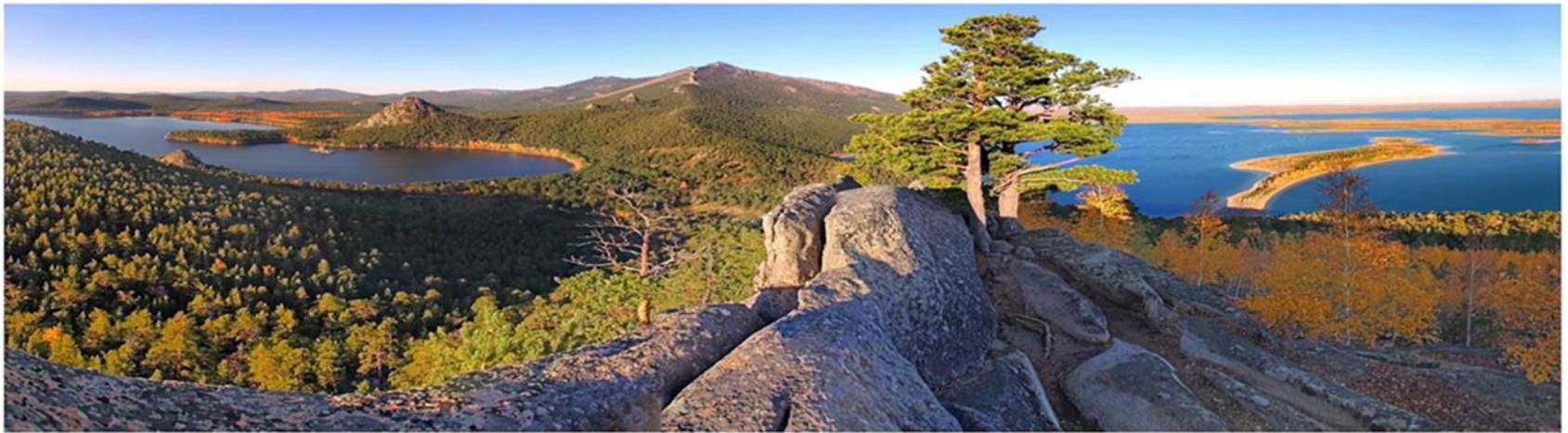
### **The practice of interaction between public authorities and the public:**

- Conferences, seminars, round tables, workshops with the participation of international experts, NGOs and other stakeholders to provide recommendations for the implementation of the Aarhus Convention.

Participants include representatives of NGOs, prosecutors, advocates take part in these events, recently mediators began to take an interest and participate.

Results: significant changes in environmental legislation.





### **Forms of study of environmental law for judges:**

- Training programs for graduate students in the Institute of Justice;
- Training programs on advanced training courses;
- Training of judges in the Supreme Court;
- Training in training centers of regional courts;
- Coaching and mentoring.

**Support of educational and methodological materials:** Teaching and practical guide on use of the Aarhus Convention by the courts.

Website of the Supreme Court, section "Cooperation": page "Implementation of the Aarhus Convention".

- Non-governmental organizations and sites of Aarhus Centres, the necessary information, the draft laws, regulatory decrees.

**Thank you for attention!**

