

## **ANALYSIS**

### **of environmental and civil procedural legislation of the Republic of Kazakhstan for compliance with the requirements of the Aarhus Convention in relation to access to environmental information, justice and participation of the public in decision-making process.**

The subject of this analysis is the current environmental and civil procedural legislation of the Republic of Kazakhstan, the court decisions made over the period of 2008-2011 regarding the disputes on access to ecological information, participation of the public in decision-making process and access to justice on issues relating to environment.

The purpose of the analysis is conducting necessary actions for implementing the decisions of the Parties to the Aarhus Convention IV/9c on compliance by Kazakhstan with its obligations under the Convention, determination of the conformity of the national legislation of the Republic of Kazakhstan with the Aarhus Convention and development of recommendations to bring the national legislation of the Republic of Kazakhstan in accordance with the provisions of the Aarhus Convention.

The Aarhus Convention was ratified by the Republic of Kazakhstan on 23 October 2000. The Preamble to the Convention emphasizes that adequate protection of the environment is essential for exercising basic human rights, that every human being has the right to live in a healthy environment and has the duty to protect it. The Aarhus Convention applies to international treaties that are binding for the state, it imposes on the Government and public authorities a clear commitment to the public in terms of ensuring the public access to information, participation in decision making process and access to justice.

#### **Access to environmental information**

Article 4 of the Constitution of the Republic of Kazakhstan states:

“The current law in the Republic of Kazakhstan are the provisions of the Constitution, the corresponding laws and other regulatory legal acts, international treaties and other obligations of the Republic, as well as the regulatory decisions of the Constitutional Council and the Supreme Court.”

The Constitution has the supreme legal force and direct effect across the whole territory of the Republic.

International treaties ratified by the Republic shall have priority over its laws and shall be applied directly except for the cases when an international treaty states that its application requires promulgation of a law.

All laws, international treaties to which the Republic is a participant shall be published. Official publication of regulations relating to the rights, freedoms and duties of citizens, is a prerequisite for their use. » Thus, the right to obtain information is a constitutional right of citizens of the Republic of Kazakhstan. Article 18 of Part 3 of the Constitution of the Republic of Kazakhstan reads:

“Public bodies, public associations, officials and mass media must provide every citizen the opportunity to familiarize themselves with documents, decisions and information sources affecting his/her rights and interests.”

Under the Aarhus Convention the status of all elements of the environment, as well as the factors, activities or measures that affect or may affect elements of the environment, are considered environmental information. The Aarhus Convention imposes on public bodies the following duties:

- to collect environmental information
- to provide free access to environmental information
- to actively promote certain types of environmental information.

The Concept of Environmental Safety for 2004-2015, approved by the Presidential Decree of December 3, 2003, defines public access to environmental information and participation in environmental issues as one of the basic principles of environmental safety. The document stipulates that the authorities must ensure that the public has appropriate access to environmental information, as well as measures to improve quality, operationality and relevance of the materials submitted.

Activities of government agencies and other entities on production and disseminating environmental information are regulated by Article 160 of the Environmental Code, according to which:

collection, recording, storage and dissemination of environmental information by public agencies and other entities are carried out for implementation of the purposes of the information activities of government agencies, planning and implementation of measures for environmental protection and enforcement of the right of citizens to favorable for live and health environment.

Environmental information subject to obligatory collection, recording and storage by government agencies and other juridical entities is established by the legislation of the Republic of Kazakhstan.

Information about proposed and on-going activities which may have significant effects on environment, as well as any emergency situations of natural and technogenous disasters that poses a serious threat to environment, life and health is

subject to mandatory inspection and recording by specifically authorized state agencies.

In order to systematize environmental information and improve access to it public agencies form and support electronic cadastres of environmental information.

The content of the notion “environmental information” is specified in Article 159 of the Environmental Code of the Republic of Kazakhstan, according to which environmental information includes information and data on:

- 1) the state of the environment and its objects;
- 2) the factors affecting the environment, including those on its pollution;
- 3) program, administrative and other measures which have or may have an impact on environment;
- 4) environmental regulations and environmental requirements for business and other activities;
- 5) planned and on-going measures to protect environment and their financing;
- 6) activities that have or are likely to have an impact on environment, decision making process and results of environmental inspections by inspectors on it, including the examined during this process calculations, analysis, and other information relating to environment;
- 7) impact of environment on health, safety and living conditions of the population, cultural objects, buildings and facilities.

Article 164 of the Environmental Code of the Republic of Kazakhstan guarantees to physical persons and juridical entities the right to free access to open to the public government information resources of environmental information and imposes on public authorities and officials performing governmental functions, as well as on juridical entities that provide services to the public on the basis of a public contract relating to environment, to provide public access to environmental information, including based on requests of physical persons and legal entities.

The Environmental Code of the Republic of Kazakhstan (Article 160) provides for the responsibility of public authorities to disseminate through posting in the Internet and through use other public information and communication tools, the following types of environmental information:

- 1) reports on the state of environment;
- 2) drafts and texts of regulations and international agreements on protection of environment;
- 3) projects and texts of documents relating to public policies, programs and plans in the field of environmental protection;
- 4) reports on results of control-and-inspection and enforcement activities in the field of environmental protection;
- 5) information attributed to the list of basic e-government services in the field of environmental protection.

Centralized collection, recording and storing of environmental information in Kazakhstan is implemented by the State Fund of environmental information. Information resources of the State Fund of environmental information include materials and documents:

- 1) mandatory for submitting by governmental agencies and juridical persons;
- 2) handed over by natural and legal persons on a voluntary basis.

The composition of the State Fund of environmental information includes the following types of environmental information:

- 1) cadastres of natural resources;
- 2) Register of pollutants emissions and transfer, and other registers environmental information;
- 3) a list of environmentally hazardous facilities;
- 4) environmental monitoring data;
- 5) materials of environmental impact assessment and the state environmental expertise, with the consent of the customer of the proposed activity;
- 6) regulations and the regulatory-and-technical documents in the field of environmental protection and natural resources;
- 7) reports on implementation of research and experimental-and-development activities related to protection of environment;
- 8) research-and-technical literature in the field of ecology and environmentally clean technologies;
- 9) other materials and documents containing environmental information.

Article 163 of the Environmental Code established that environmental information is available to the public, except for the cases stipulated for by the laws of the Republic of Kazakhstan. Access to certain information and data, comprising environmental information open for the shall be ensured by making them available upon requests of physical persons and legal entities, through dissemination in mass media, in special publications, the Internet, and with the use of other public information and communication tools.

Access to government information resources (information databases) of environmental information is ensured through establishment and maintenance of public registers and cadastres of environmental information. Ensuring of access to documents and information resources, containing information and data with limited access, shall be carried out in accordance with procedures, established by legislation of the Republic of Kazakhstan.

The right to free access of physical persons and entities to public government information resources of environmental information is enshrined in Article 164 of the Environmental Code of the Republic of Kazakhstan, according to which:

- physical or juridical entities are entitled to free access to public government information resources of environmental information;

- governmental agencies as well as officials performing public functions, or physical and juridical entities, providing to population on the basis of a public contract services related to environment, are obliged to provide public access to environmental information, including upon requests of physical persons and juridical entities.

- other physical and juridical entities operating in the territory of the Republic of Kazakhstan shall be obliged to provide environmental information upon requests of persons relating to its impact on lives and health of citizens.

- physical and juridical entities have the right to obtain environmental information in the requested form, if there is no reason to give it in another form.

Environmental Code (Article 160) stipulates for the obligation of public authorities to disseminate through the posting in the Internet and use other public information-and-communication tools the following types of environmental information:

- 1) reports on the state of environment;
- 2) drafts and texts of regulations and international agreements on protection of environment;
- 3) drafts and texts of documents relating to public policies, programs and plans in the field of environmental protection;
- 4) reports on the results of control-and-inspection and enforcement activities in the field of environmental protection;
- 5) information attributed to the list of basic e-government services in the field of environmental protection.

In Kazakhstan, a list of information services provided by government agencies to physical and legal persons is stipulated for by Article 15.2 of the law “On administrative procedures”, according to which state agencies for provision of information services to physical and legal persons establish websites, which must contain:

- 1) general information about activities of the governmental agency;
- 2) a list of structural subdivisions/departments the governmental agency and its subordinate organizations, and information about their Heads;
- 3) a list of territorial authorities (if any), their goals and functions, as well as information about their Heads;
- 4) lists of registers, inventories (and) cadastres held by the governmental agency;
- 5) lists of publicly available electronic information resources and electronic services provided to physical and juridical entities;

- 6) regulations adopted and enforced by the governmental body;
- 7) sample application forms/documents accepted by the governmental agency for consideration in accordance with the laws and regulations;
- 8) information on public tenders (biddings, auctions), examinations and other events and their terms, as well as the terms of participation of physical and juridical entities in them;
- 9) information on the procedure of consideration of applications from physical and legal persons in the governmental agency, visiting hours for citizens, review of applications, information about the results of their review and actions taken;
- 10) information on the announced vacancies in the governmental agency, qualifications for candidates to fill vacant posts in the public service;
- 11) texts of official speeches and statements of Heads of government agencies and their deputies;
- 12) availability of “question-answer” service;
- 13) interactive interviewing of citizens;
- 14) news line;
- 15) statistical data and indicators characterizing the state and dynamics of the industry (sector) in the part relating to the competence of the governmental agency;
- 16) analytical reports and reviews of informational nature on the activities of the governmental agency;
- 17) postal addresses, email addresses, telephone reference service support of the governmental agency, its structural subdivisions, territorial bodies and subordinate organizations;
- 18) other sections.

Regular updating of the news line in the website of state authority should be carried out on a daily basis, other sections are updated as necessary, but at least once a week.

In Kazakhstan, the authorized body in the field of environmental protection shall organize maintaining of the State Fund for Environmental Information, which performs centralized collection, recording and storage of environmental information. Information resources of the State Fund of Environmental Information include materials and documents:

- 1) presented in an obligatory manner by governmental agencies and juridical persons;
- 2) submitted by physical and juridical persons on a voluntary basis.

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

- 1) cadastres of natural resources;
- 2) Register of polluting substances emissions and transfer and other registers of environmental information;

- 3) a list of environmentally hazardous facilities;
- 4) environmental monitoring data;
- 5) materials of environmental impact assessment and (those) of the governmental ecological expertise, with the consent of the customer of the proposed activity;
- 6) regulations and regulatory and technical documents in the field of environmental protection and use of natural resources;
- 7) reports on implementation of research and development activities related to protection of environment;
- 8) research-and-technical publications in the field of ecology and environmentally clean technologies;
- 9) other materials and documents containing environmental information.

Law of the Republic of Kazakhstan “On emergency situations of natural and technogenous nature” (Article 7) states that in the field of natural and technogenous nature Kazakh citizens have the right to:

- be informed of the risks they may be exposed to in certain places of stay in the Republic of Kazakhstan, and about necessary security measures;
- apply in person, submit/send to public and local government bodies individual and collective appeals on issues relating to protection of citizens, environment and business entities from emergency situations and consequences thereof;
- participate in activities for prevention and elimination of emergency situations, use means for collective and individual protection, other property intended for protection of citizens;
- The to protection of life, health and personal property in the event of emergency situations occurrence;
- to receive compensation and benefits for the damage caused to their health when engaging them to perform duties in emergency situations;
- social welfare in case of loss of ability to work or due illness, loss of breadwinner, who was killed or died from injury or illness, if they occurred as a result of performing duties on liquidation of emergency situations in accordance with legislation of the Republic of Kazakhstan on the state social allowances;
- to compensation of damages caused to their health and property as the result of emergency situations.

Article 17 of the Law established that information in the field of emergency situations of natural and technogenous nature consists of data on the degree of risks and harmfulness of operations of organizations, the necessary security, effects, measures for the prevention and liquidation of emergency situations. It is open and transparent, and is subject to publishing in mass media, through communication and warning systems. Concealment, late submission or presentation by officials of deliberately false information in emergency situations of natural and technogenous nature is disallowed.

Environmental information according to Part 1 of Article 17 of the Law of the Republic of Kazakhstan “On the State Secrets” is not subject to classifying and, as enshrined in Article 163 of the Environmental Code of the Republic of Kazakhstan, is public, except for the cases stipulated for by the laws of the Republic of Kazakhstan.

Article 17 of the Law of the Republic of Kazakhstan “On the State Secrets: includes in the list of information not subject to classifying it as secret information on emergencies and disasters that threaten the safety and health, and their consequences, as well as natural disasters, their official forecasts and consequences, as well as state of environment, health, sanitation, demography, education, culture, agriculture, and the state of crime; on violations of the rights and freedoms of citizens; about facts of violations of law by state bodies and organizations, their officials.

Officials, who made a decision to classify the above information or to include it for these purposes in information carrying media constituting state secrets, shall be liable in accordance with the laws of the Republic of Kazakhstan. Citizens have the right to appeal against such decisions in court.

General legal requirements for registration of a request for information specified in Article 6 of the Republic of Kazakhstan Law “On the procedure of consideration of applications from physical and juridical persons” and include as follows:

The address should be addressed to an entity or official, which/who has the competence to solve the issues specified in the application.

The address of a physical person shall specify his/her family name, name and optionally the patronymic, street address, while the address of a juridical entity - its name, postal address, reference number and date. The address shall be signed by the applicant or certified with the electronic digital signature.

When filing a complaint it should specify the name and initials of officials whose actions are appealed, motives of the appeal and claims.

The applicant who addressed the subject directly in written shall be issued a card with indication of the date and time, name and initials of the person who accepted the appeal.

An appeal for consideration of which it is not required to obtain information from other entities, officers, or on-site checking, is considered within fifteen calendar days. An appeal for consideration of which it is required to obtain information from other entities, officers or on-site checking is considered and a decision on it is made within thirty calendar days of its receipt by the subject (or) an officer. In the cases where it is necessary to conduct a further study or an inspection, the period of consideration may be extended for not more than thirty days, about which the applicant will be informed within three calendar days from the date of extension of the period for consideration. If decision of the issues



presented in the appeal takes a longer period of time, the appeal shall be taken under additional control until regarding its execution, about which the applicant shall be informed within three calendar days.

Under the current legislation of the Republic of Kazakhstan financial, administrative and criminal liability have been stipulated for not providing, for untimely, as well as for providing incomplete or misleading environmental information.

Thus, Article 84 of the Code of Administrative Offences of the Republic of Kazakhstan establishes administrative responsibility for the following:

- unlawful refusal to provide documents and materials, collected in a duly manner, directly affecting the rights and freedoms of a physical person;
- providing to a physical person incomplete or knowingly false information;
- wrongful attribution of publicly available information to information with restricted access, not having signs of an act punishable under criminal law;
- unlawful restriction of the right of access to information resources.

The Criminal Code of the Republic of Kazakhstan stipulates for criminal liability (Article 268) for concealment or misrepresentation of information about events, facts or phenomena that endanger human life or health or environment, committed by a person who is obliged to provide population with such information.

Failure to provide environmental information, providing incomplete and unreliable information, or with violation of the established terms can be appealed against to a higher state body (higher official) or the court. At the same time filing a complaint to a higher authority does not prevent simultaneous filing an appeal by the applicant in court. State bodies and officials must avoid handling complaints in harm to the complainant, or it the interests of who it was filed, as well as not direct complaints to officials whose actions are being appealed.

Procedure for judicial appeal is established by Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan, which is called “Proceedings on cases about appealing against decisions and actions (or inaction) of state authorities, local self-government, public associations, organizations, officials and public servants.”

According to Article 279 of the Civil Procedure Code, the decisions, actions (or inaction) of state authorities, local authorities, associations, organizations, officials, civil servants, (that could be) appealed against in court, are collegial and individual decisions and actions (or inaction) resulting in:

1) violation of the rights, freedoms and legitimate interests of citizens and juridical entities;

2) establishing of an obstacle to a citizen to exercise his/her rights and freedoms, as well as to a juridical entity to exercise its rights and interests protected by law;

3) imposing illegitimately on a citizen or juridical person of any duty or they were unlawfully brought to justice.

A citizen and a juridical entity may file a case in court within three months from the date when they became aware of the violation of their rights, freedoms and legitimate interests. Failure to file an application within a three-month period shall not constitute a ground for the court to refuse to accept the appeal. The reasons for failure to file (an application) within the established term shall be examined by sitting of the court when considering the application in essence and may be one of the grounds for denial of the application.

### ***Conclusions:***

Analysis of the above listed current legislation of the Republic of Kazakhstan shows that, in general, in terms of access to environmental information it complies with the provisions of the Aarhus Convention. The general procedure for the provision to citizens and the public of environmental information is determined by the current legislation of the Republic of Kazakhstan in sufficient detail and explicitly.

Now it is necessary to find out to what extent the written legislation provides access to environmental information.

Firstly, absence in the Environmental Code of a definition of such concepts as “public”, “interested parties (stakeholders)” and the presence in the law of some controversy attract immediate attention. Thus Part 1 of Article 136 of the Environmental Code provides that physical and juridical entities must have access to information about work of state bodies exercising state control in the field of environmental protection, protection, reproduction and use of natural resources and its results. At the same time, Part 2 specifies that public authorities exercising state control in the field of environmental protection, reproduction and use of natural resources, ensure publication of the results of not all, but only of individual audits and annual reporting.

Article 118 of the Environmental Code for officials in charge of state environmental control, imposes a duty to maintain confidentiality of inspection information, while of any violations of environmental laws, which contain elements of a criminal offense (they shall) inform only law enforcement agencies.

Article 127 Article 127 of the Environmental Code also aims to ensure confidentiality of information during the environmental check by inspection.

Availability of such contradictions in the law creates conditions for concealment by public authorities of that environmental information in respect of which the Aarhus Convention requires to use the public interest criteria.

The same can be said of the Law of the Republic of Kazakhstan “On State Statistics”, which guarantees physical and juridical entities confidentiality of primary statistical information, which may impose a limit on obtaining by the public of statistical data on emissions, discharges and waste placed by a particular company.

Information that is of interest to the public at large may be attributed to the category for office use only under paragraph 4 of Article 13 of the law “On administrative procedures,” according to which “the information may be attributed to the category of “for office use only” based on a decision of the head of the state body, the organization.” Information on horsepower of equipment, on raw material resources base, the number of shifts, the amount of funding of environmental activities, etc. of a particular entity may be classified as a commercial secret, because the current legislation does not recognize such information as information about the state of environment and its pollution, although without this information it is impossible to assess the scale of the impact of economic activity on the environment.

In this context, it seems that only a small part of environmental information of interest to the general public becomes public through publishing it in the media and posting in websites of the State authorities. The greater part of environmental information is only available through requesting it.

It is difficult for the public to get information on a number of important chemical substances-pollutants, because there is no monitoring on them and as a result, the authorities do not have such information. Materials of environmental impact assessment and of the state environmental expertise are not generally available to the public, because such information may be included in structure of the State Environmental Fund only upon the consent of the customer of the proposed activity.

The Aarhus Convention (Article 5.8) requires from the countries to develop mechanisms for making available for the public of a sufficient volume of information product. This information should be provided in such a way that the consumers would be able to make informed environmental choices. According to Article 2 of Part 3 of the Aarhus Convention, information on genetically modified organisms is environmental information, access to which the member-state is obliged to ensure to help protect the rights of every person of the current and future generations to live in an environment favorable for their health and well-being.

As follows from the content of Article 281 of the Environmental Code of Kazakhstan, genetically modified organisms and products are potentially

dangerous biological agents. The goals of the state regulation in the field of food safety, as specified in Article 4 of the Law “On food safety,” is to ensure food safety for human life and health and the environment, protect the legitimate interests of consumers, environmental safety (and) national security. The enshrined in Article 4 principles of transparency of activities, publicity, accessibility, reliability of information, traceability of food products in all processes (in stages) of its development (creation), production (manufacturing), sales, disposal and destruction, imposes the responsibility on the state to make this information public. Meanwhile, in Kazakhstan, information on activities with GMOs can not be considered public and no right to free access to this information right is ensured for physical and juridical entities, as this information is not included in the list of information published on the website of the Ministry of Environment, the competence of which is development of a system of information dissemination, maintaining of the State Fund for ecological information, and, therefore, the responsibility for the development and maintaining publically accessible recourse on GMOs.

Not an unambiguous assessment results from the right of public bodies to charge a fee for the provision of environmental information, although it is not contrary to the obligations of the Republic of Kazakhstan on observance of the Aarhus Convention, paragraph 8 of Article 4, which states: “Each Party may allow its public authorities to charge a fee for the information provided if the charge does not exceed a reasonable amount. Public authorities intending to charge for supplying information shall inform the applicants about tariff rates that may be levied, indicating the circumstances based on which fees may be levied (on the applicants) or (the applicants) may be exempted from their pay, and when information is made available subject to prior payment of such a fee.”

The Law of the Republic of Kazakhstan “On administrative procedures” (Article 1 hour 2-2) a public service is defined as an activity based on the functions (and) powers stipulated by legislative acts of the Republic of Kazakhstan and the acts of the President of the Republic of Kazakhstan, funded at the expense of the budget and from the budget (cost estimates) of the National Bank of Kazakhstan, aimed at ensuring the rights, freedoms, protection of legitimate interests and needs of physical and juridical entities, carried out in accordance with the standards of public services. It seems that based on the content of this provision of the law, public information services (provision of information to physical and juridical entities) should be free of charge.

Meanwhile, the Article 166 Part 3 of the Environmental Code of the Republic of Kazakhstan guarantees free of charge provision of environmental information only through the state public electronic register and cadastre of environmental information, while Part 1 of Article 166 of the Environmental Code provides the

right to the public agency to charge fees for the provision of environmental information, at the same time, no common rules for governmental bodies on payment for services for environmental information exist.

***Recommendations:***

1. The Environmental Code of Kazakhstan, Article 1 should be supplemented by definitions of “public” and “stakeholders” as follows:

“the public” - one or more physical or juridical entities and, in accordance with legislation of the Republic of Kazakhstan, their associations, organizations or groups;

“stakeholders” - the public which is affected or may be affected by the decision-making on issues related to environment, or having an interest in this process; for the purposes of this definition, public associations, promoting environmental protection are considered as organizations that have an interest.

2. For more effective and full-fledged implementation by the Republic of Kazakhstan of its obligations under the Aarhus Convention, and to ensure transparency in the work of public authorities on providing environmental information, reducing financial barriers for access to environmental information and establishing a transparent system of such access it is necessary to adopt Single Rules for government bodies on setting tariffs for payment for services of providing environmental information, and the Article 15.2 of the law “On administrative procedures” enshrines the responsibility of government bodies to place in their websites tariffs rates and method of payment for information services provided at the request of physical and juridical entities.

2. In order to further implementation paragraphs 8.6 of Article 5 of the Aarhus Convention, it is necessary to enshrine in the Regulation of the Ministry of Environment the obligation to establish and maintain a publicly accessible information resource on activities with GMOs in the Republic of Kazakhstan, which includes information about the subject of the economic and other activities in the sphere of GMOs, the list of GMOs that that were authorized for placement in the market of the Republic of Kazakhstan in the form of a product or as an ingredient of a product, on risk assessment of GMOs and (or) the effects on human health and environment, genetic modification of the object, the severity of any adverse effects on environment and/or effects on health that may be caused by unintentional emission (release) of the GMO or absence of appropriate measures to eliminate the threat, therefore, (it is necessary) to make appropriate amendments to the Regulations of the Ministry of Environmental Protection of Kazakhstan,

approved by the Government of the Republic of Kazakhstan dated December 8, 2007 № 1201.

3. For the full-fledged exercise of the rights of citizens and juridical entities to have access to environmental information:

- reduce the list of information that can be included in the State Fund for environmental information only with the consent of the customer of the proposed activity;
- officials exercising state environmental control must ensure publication of results of all inspections, during which violations of environmental legislation were revealed;
- inspectors' information on facts of violations of environmental law, which contain the elements of a criminal offense, shall not be confidential;
- develop criteria of public interest in the restricted information.

### **Participation of the public in decision-making process**

The Aarhus Convention defines four major categories of decisions that can or should be covered by the provisions on public participation:

1. Issuance of permits in areas directly identified as subject to EIA procedure (Article 6.1. (A) of the Aarhus Convention and relevant national legislation on EIA);
2. Issuance of permits for activities that potentially have a significant effect on environment, for which the requirements regarding the development of EIA are issued by a body making the decision in its sole discretion (Article 6.1 (b) of the Aarhus Convention and relevant national legislation on EIA);
3. Issuance of permits for activities with a potential impact on environment to which the requirements for the development of the EIA or passage of environmental expertise do not apply);
4. Issuance of licenses to provide certain services

Article 6.4 of the Aarhus Convention imposes an obligation on the member-state to ensure public participation at an early stage, when all options are open for considering different variants and when effective public participation can be ensured.

Article 5 of the Environmental Code of the Republic of Kazakhstan attributes the presumption of environmental threat from planned economic and other activities, and mandatory assessment of impact on the environment and human health when making a decision on its implementation to the basic principles of environmental legislation of the Republic of Kazakhstan.

Conducting EIA is provided in Article 35 of the Environmental Code, according to within the framework of EIA procedure the likely impact of economic and other activities on environment and human health are assessed (and) activities are developed to prevent adverse effects (destruction, degradation, damage and depletion of natural ecological systems and natural resources), on improving the environment, taking into account the requirements of the environmental legislation of the Republic of Kazakhstan.

Environmental impact assessment is mandatory for all types of business and other activities that may have a direct or indirect impact on environment and human health. Impact assessment is an integral part of pre-planning, planning, pre-project and project documentation.

As it follows from the content of Part 1 of Article 41 of the Environmental Code, documentation environmental impact assessment includes materials on recording of public opinion, written in the minutes and containing findings of the public discussion of environmental aspects of the proposed activity.

The right of individuals and NGOs to participate in the discussion of draft laws and regulations on issues of environmental protection on the stage of their preparation and to submit their comments to legislation-drafters, to participate in the preparation of plans and programs relating to environment, to participate in decision-making by public authorities on issues related to environment in accordance with the legislation of the Republic of Kazakhstan, is enshrined in Article 13 and Article 14 of the Environmental Code.

The Order of the Minister of Environment of 28 June 2007, № 204-p approved the Instruction on conducting environmental impact assessment of planned economic and other activities on the environment during the development of pre-planning, planning, pre-project and project documentation. This Instruction provides that during the EIA process access to information on the EIA and public hearings to discuss the EIA is ensured to the public, at the same time the reflected in the Regulations mechanism of public participation is ambiguous. First, attention is drawn to the fact that the organization and holding of public hearings as well as the collection of written proposals and public comments on the EIA materials and questionnaires-based survey of population were assigned as a responsibility to the customer (the developer) of the pre-project, project documentation, i.e. to the interested party. Meanwhile, the obligations under the Aarhus Convention are obligations of the State, therefore, responsibility for organizing and facilitating public participation in the EIA process should rest with the state authorities.

Additionally, the instructions lack clearly defined procedures for the timely, proper and effective informing (the public) and recording of public opinion. The Instruction does not contain any requirements on the composition/number of participants in public hearings, and, therefore, it is possible that participants in public hearings will be only representatives of the customer and developer and the

public hearing will be recognized as valid in the absence of representatives of the interested public. The Instruction also does not contain instructions and mechanisms of coordination with the public of the content of the minutes of public hearings prior to signing it.

The interested public is entitled to know about the plans and programs of regional development, about proposed business-and-economic activities in the region of their residence and how these activities can affect the environment. The right of physical persons and NGOs to participate in the process of decision-making by public authorities on issues related to environment and to receive from state bodies and organizations timely, complete and accurate environmental information is enshrined in Article 13 and Article 14 of the Environmental Code of Kazakhstan. One of the steps in the procedure of preparation and decision-making on issues related to environment is the state environmental expertise.

The current version of Part 2 of Article 57 of the Environmental Code provides all interested persons an opportunity to express their views during the period of conducting the state environmental expertise. The procedure of the state environmental expertise is regulated in detail by the Rules of the state environmental expertise approved by the Order of the Minister of Environmental Protection of Kazakhstan dated June 28, 2007. № 207-p. Since plans and programs, affecting or likely to affect the elements of the environment are part of the environmental information, which by part 1 of Article 163 of the Environmental Code is public, with some exceptions, it is assumed that during conducting of the state environmental expertise, information about the content of the materials listed in paragraph 12 of the Rules of the state environmental expertise is accessible to stakeholders.

Mechanism for public participation during conducting of the state environmental expertise could be considered positive, if not a few inevitable concerns.

First of all, participation of the public in the period of conducting of the state environmental review is limited to only being able to express their opinions, at the same time the content of Part 2 of Article 57 of the Environmental Code does not answer the questions about how, when and what exactly the public can express their opinions, and which information it is entitled to receive on the object of the state ecological expertise.

The form of public participation in decision-making on issues related to environment and the mechanism of public opinion reflection on these issues is the public environmental expertise. According to Article 60 of the Environmental Code of the Republic of Kazakhstan, the subject of public environmental expertise is observance of the public interest to preserve favorable environment for the life and health of citizens.



As stated in Part 1 of Article 62 of the Environmental Code, an expert of public environmental expertise is an physical person who possesses the academic and (or) a working knowledge of the subject matter and attracted by the organizer of public environmental expertise for conducting of the public expertise.

Meanwhile, the law of the Republic of Kazakhstan as of January 11, 2007 N 214 “On Licensing” in Article 27 (paragraph 8) stated that for work in the field of environmental impact assessment a license is required, which is contrary to the Environmental Code, namely, Part 1 of Article 14 which provides public organizations carrying out their activities in the field of environmental protection the right to initiate and organize public environmental expertise. Therefore, for exercising of these rights by the public associations no additional permits are required. The existence of these contradictions in the legal acts under certain conditions can result in serious legal problem and limit the rights of citizens to public participation in the form of state ecological expertise.

In addition to the Environmental Code, the mechanisms of attracting and public participation are stipulated for in a number of other legislative acts of the Republic of Kazakhstan:

**-in the law “On architectural, urban planning and construction activities in the Republic of Kazakhstan”** (Article 13), according to which, prior to approval of urban planning and architectural and construction documents, physical and juridical entities shall have the right to participate in discussions (and) make suggestions to change the decisions that affect public or private interest.

**- in the law “On Technical Regulation”** (Article 19), according to which from the moment of publication of a notification about development of a draft of a technical regulation its draft must be made available to interested parties for review.

The state agency which has developed a draft of technical regulation for regulation shall:

- 1) organize a public discussion of the draft;
- 2) finalizing the draft taking into account the comments received, and places in an official publication of the authorized body and the public information system;
- 3) furnishes upon request to interested parties comments received on the draft technical regulations.

The period of public discussion of the draft technical regulation (from the date of publication of notice of its development to the date of publication of the notice of completion of public discussion) should be not less than sixty calendar days.

Notice of completion of public discussion of the draft technical regulation shall be published in the official newspaper of the authorized body and the public

information system and contain information on how to get familiarized with the draft and the list of the comments received, the name of the state body, that developed the draft technical regulation, postal and e-mail address.

- **in the “Water Code”** (Article 62 and Article 63), which establishes the right of physical persons to apply to authorities and organizations with inquiries, complaints, requests and suggestions on issues of the use and protection of water resources and request their consideration, to make proposals for conducting of public environmental expertise in the sphere of the use and protection of water resources and to take part in it. As for the rights of public associations in the sphere of using and protecting the water resources, they were provided the right to send their representatives to participate in work of the basin councils and carry out public control upon their own initiative.

- **in the “Land Code”** (Article 15 part 2) local government bodies in the sphere of regulation of land relations shall have the responsibility to ensure public participation in solving issues of local importance within the authority established by the legislative acts of the Republic of Kazakhstan.

As for the **Forest Code of the Republic of Kazakhstan**, it stipulates for civic participation only in ensuring protection and safety of forest resources (Article 68) and protection of forest resources from fire, prevention of fire and fire-fighting (operations) (Article 66). The Forest Code does not stipulate for public participation in the processes of management, planning, public environmental control on/over issues the guarding and protection of the forest fund, in the process of preparation of draft regulations, plans, programs and decision-making for sustainable development of forestry.

### ***Conclusions and recommendations:***

In general, the legislation of the Republic of Kazakhstan in the field of environmental protection provides some mechanisms for public participation in decision-making. However, our analysis allows for formulating a conclusion that the forms of public participation in decision-making are enshrined in legislation only in the Environmental Code of the EIA procedure and the state environmental expertise.

The lack of legislative consolidation of mechanisms for public participation in other codes that regulate social relations in the sphere of use and protection of natural resources does not guarantee practical application of provisions of the Aarhus Convention by all other departments, except the MEP. Additionally, current legislation does not contain mechanisms for effective and timely public involvement in the preparation of draft laws, plans and programs in the field of environmental protection.

For further integration in the legislation of the Republic of Kazakhstan of provisions of the Aarhus Convention and detailed regulation of public participation it is necessary to:

1. Enshrine mechanisms and forms of public participation in the decision-making process in all normative acts regulating social relations in the sphere of use and protection of natural resources and at all stages of decision making.
2. Develop mechanisms of adequate, timely and effective informing of the public at the initial stage of decision-making on all issues related to environment and more clearly define at the level of sub-legislation all the parameters of effective public participation in decision-making on specific types of proposed economic activities.
3. Develop a clear procedure of informing about the legislative process, the process of drawing up plans and programs in the field of environmental protection, involvement in these processes of interested public (stakeholders), the mechanisms of taking public opinion into account at the stage of making the final decision.
4. Develop clear criteria based on which a public hearing can be considered valid or invalid, or conducted in violation of the established requirements that will enable the interested public (stakeholders) as necessary to appeal against the results of the public hearing in the court.
5. At the time of conducting the state environmental expertise, in addition to the public hearing, stipulate also for other possible forms of public participation.
6. Provide the public with freer time frame for conducting of the public environmental expertise, without limiting its capabilities only by the period of time when the state ecological expertise is being conducted.
7. Develop and legislatively enshrine (consolidate?) effective mechanisms for notifying the interested public of the completion of the state environmental expertise and provide all the interested parties (stakeholders) access to information on the object of expertise after adoption of a decision on the conclusion of the state environmental expertise, establish specific time frames for notification of the interested public concerned about the completion of the SEE and the procedure of familiarization with the experts' conclusion (opinion?).
8. For bringing Article 27 of the Law "On Licensing" of the Republic of Kazakhstan in line with the principles of the Aarhus Convention on the rights of citizens to public participation in the form of a public environmental expertise and in order to exclude PEE from the types of activities subject to licensing to Part 8 of Article 27 of the Law "On

Licensing” after the words “works in the sphere” should be inserted the word “the state (governmental?)”. At the same time, the same addition should be made to Article 21 of the Environmental Code, which regulates licensing of activities in the field of environmental protection.

## **Access to justice**

In accordance with the Constitution of the Republic of Kazakhstan, everyone is entitled to legal protection of one’s own rights and freedoms (Article 13). Judicial power is exercised through **civil, criminal, administrative**, and other forms of legal **proceedings** established by law (Article 75). The judicial power shall extend to all cases and disputes arising under the Constitution, laws, other regulations and **international agreements**. Decisions, judgments and other writs of courts are binding across the entire territory of the Republic (Article 76).

Issues of public access to justice on environmental issues in the Republic of Kazakhstan are governed by provisions of the Aarhus Convention, the Environmental Code, the Civil Procedure Code and other legislative acts regulating the relations on use of natural resources and environmental protection.

Providing public access to justice on environmental issues covers all procedural aspects of the work of courts and judges, and bailiffs. It should be noted that the Civil Procedure Code of the Republic of Kazakhstan (hereinafter CPC RK) provides for such access under the following main principles and provisions:

*- unimpeded opportunity of access of every citizen or public association to a court with a lawsuit (based on an application) or complaint*

Article 8 of the Code of Civil Procedure of Kazakhstan, according to which everyone has the right in accordance with the procedural law to apply to a court for protection of violated or disputed constitutional rights, freedoms or legitimate interests. State bodies, juridical entities or citizens have the right to apply to a court to protect the rights and lawful interests of other persons or of an indefinite number of persons in the cases provided for by law;

*- equality of all before the law and the courts*

Article 13 of the Code of Civil Procedure of Kazakhstan guarantees that the administration of justice on civil issues based on the basis of equality before the law and the courts. In the course of civil proceedings none of the citizens can be given preference, and none of them can be discriminated against on grounds of their origin, social, property status, sex, race, nationality, language, religion,

beliefs, place of residence or any other circumstances, none of the entities may be preferred, and none of them can be discriminated against based on their location, legal form, affiliation, ownership form and other factors);

*- application to a court to protect the rights of other persons, public and state interests*

In cases provided for by law, organizations or individuals may apply to a court to protect rights, freedoms and lawful interests of other persons, upon request, as well as public or state interests. Persons who files lawsuits in order to protect other persons' interests, shall enjoy all the procedural rights and bear all the procedural obligations of the plaintiff, except for the right to enter into a settlement agreement and an agreement on dispute resolution the mediation procedure (Article 56 CPC RK);

*- reasonable procedural time frames for preparing the case for judicial proceedings by a judge.*

A judge must decide on accepting a statement of claim for proceedings, within five days from the receipt of the statement of claim. Preparing of civil cases for court proceedings shall be performed not later than seven days from the date of acceptance of the statement of claim, unless otherwise provided by legislation. In exceptionally difficult cases, except for cases involving alimony, compensation for harm caused by an injury or other damage to health, as well as on compensation in cases of death of breadwinner and on claims arising out of labor relations, this period may be extended for up to one month based on a reasoned decision of a judge (Article 152 and Article 167 of the Code of Civil Procedure of Kazakhstan).

*- reasonable procedural term for resolution of the case by the court with ensuring a timely notification of the parties of the time and place of the hearing, or for performing specific legal proceedings*

Civil cases are considered and resolved within two months from the end of preparing the case for judicial settlement. Cases for reinstatement at employment, on recovery of alimony and contesting decisions, actions (inaction) of state authorities, local authorities, government officials, civil servants shall be considered and resolved within a period of one month. The Judicial settlement of a civil case takes place in a court sitting with mandatory notification of the persons involved in the case (Article 174 and Article 275 of the Code of Civil Procedure RK). The Parties and other persons involved in the case, who did not attend the hearing, a copy of the decision will be sent or issued not later than five days after decision in its final form (article 241 CCP RK);

*- reasonable procedural terms for the consideration of an appeal (cassation, supervisory) petition by higher court instances with ensuring timely notification of the parties of the time and place of the sitting of the appeal (cassation, supervisory) authorities*

The case in the appeal instance must be considered within one month from the date of its receipt by the court. An appellate court shall notify the parties involved in the case, about the time and place of the sitting (article 348 and article 349 of the Code of Civil Procedure Code). Motivated act of the court of appeal must be issued within five days of its adoption. (Article 359 of the Code of Civil Procedure RK)

Within fifteen days after the court of appeal decision and judicial decision in its final form, the parties and other persons participating in the case, may file an appeal (Article 383-4 of CPC RK). Appeal court must hear the case on appeal or protest within one month from the date of its receipt. Resolution of appeal must be made in the final form within five days. Decision of the court of cassation shall become in force from the moment of its adoption

Judicial acts of local and other courts which became in force may be appealed by the parties and others involved in the case, and having the right to file an appeal, a cassation appeal by persons directly to the Supreme Court of the Republic of Kazakhstan. A petition (or) a protest may be filed within one year after becoming in force of the court decision, judicial decision, (and) court ruling. These rules do not apply to cases of revision infringing the rights and freedoms of an individual and citizen enshrined by the Republic of Kazakhstan and the human of court decision, judicial decision, (and) court ruling in the event that the Constitutional Council of Kazakhstan declared unconstitutional the act on the basis of which they had been made. Application shall be considered within one month from the date of receipt, and in the case of certiorari - within one month from the date of receipt of the case.

**At the same time, during the analysis of civil procedural law a number of factors that can create barriers to access to justice should be noted.**

First of all, we should recognize that the assistance mechanisms to remove or reduce financial barriers to access to justice for the public in the implementation of the Convention in the Republic of Kazakhstan have not yet been established. The current procedural legislation establishes a mandatory procedure for payment of the state fee for going to court, while the size of the state fee and the order exemption from payment of the state duty are provided by the Tax Code. The Amount of the state duty for property-related claims for individuals is 1 percent of

the amount of the claim for juridical entities it is 3 percent. (The Amount of the state duty for property-related claim) from complaints filed in court against unlawful actions of state bodies and their officials, violation of rights of individuals - 30 percent, for complaints of misconduct of government bodies and their officials, violation of the rights of legal entities - 500 percent of the minimum estimates established by legislation on the national budget for the current year. A mandatory prerequisite for filing a lawsuit or complaint is a document confirming payment of the state fees. The absence of such a document implies abandonment of the claim in discontinuance.

According to article 501 of the Tax Code the following (physical and legal entities) shall be exempt from payment of duty in the courts based on the Aarhus Convention :

- plaintiffs - on claims for compensation for damage caused by injury or other impairment of health;
- plaintiffs on suits for the recovery of the state revenue funds in compensation for damages caused to the state by violation of environmental laws of the Republic of Kazakhstan;
- physical or juridical entities, who applied in the cases provided by law, to the court to protect the rights and lawful interests of other persons or the state.

Of public organizations only public organizations of disabled persons are exempt from payment of the state fees for filing lawsuits on issues within their competence. No other community organizations, including those of environmental focus, shall be exempt from payment of duty in courts.

State agencies and local governments, organizations, or individuals have the right to apply to a court to protect the rights of other persons, public and government interest under section 56 of CPC RK, but only in cases prescribed by law. Since Article 56 of the Code of Civil Procedure of RK is of reference nature, in relation to the organizations, the legislator probably had in mind all other organizations that are not attributed to the number of state agencies and local governments, and, therefore, also public associations.

Article 151 of the Code of Civil Procedure of Kazakhstan (states that) the plaintiff shall have the right to attach to the lawsuit a petition for postponement, deferral, exemption from payment of court costs or reducing their size, but the judge in the consideration of such an application cannot decide on his/her own, and is bound by the provisions of the Tax Code .

In addition to the cost of paying the state fee, going to court entails payment of other costs.

Costs associated with the proceedings under Article 107 of the Code of Civil Procedure of Kazakhstan include:

- 1) costs to be paid to witnesses, experts and specialists;
- 2) costs associated with the performing an inspection on-site;
- 3) costs associated with storage of evidence;
- 4) costs of search for the defendant;
- 5) costs associated with the publication of and announcements on the case;
- 6) cost of notification and invitation of the parties to the court;
- 7) travel cost of the parties and third parties, and costs of leasing of residential facilities, incurred in connection with attendance at court;
- 8) costs for payment for assistance of representatives;
- 9) costs associated with the execution of decisions, sentences, rulings and orders of the court;
- 10) other expenses recognized necessary by the court.

It should be noted that the court costs in the court proceedings shall, as a rule, be born by a person who filed a case in court. Procedure Law stipulates for compensation of costs incurred by the parties, but only if the decision was in favor of that party. If the claim is granted in part, the costs shall be adjudges to the plaintiff in proportion to the amount of the claim satisfied by court, while the defendant - in proportion to the part of the claim in which the plaintiff was denied (Article 110 of the Code of Civil Procedure Code).

Procedure Law stipulates for compensation to the party in whose favor the decision was made of the costs of a representative. Most often, the representatives in civil cases in court are lawyers and attorneys, whose services to the parties are not cheap. However, Article 111 of the Code of Civil Procedure of the RK (Part 1), on the one hand guarantees reimbursement of payments to a representative in the amount of actual costs incurred by the parties, on the other hand contains a clause that in monetary terms these costs should not exceed ten percent of the satisfied part of the claim. Here it should be noted that while for individuals in certain cases, the legislation of the Republic of Kazakhstan provides for free legal assistance (from the state budget), juridical entities free legal assistance is not available.

The obstacle to going to court is also presence in the procedural law of a provision governing damages recovery for loss of time on behalf of the party which in bad faith had filed an ungrounded claim or a appeal against a claim or systematically counteracted to expedient and correct hearing and adjudication of the case (Article 112 of the Code of Civil Procedure Code). The main legal problem with availability of the mentioned provision in the procedural law is that the court may apply this provision in any case, if the claim is denied, and the defendant shall be



notified in a claim for compensation for loss of working time. For public ecological organizations “ a fear” to lose a lawsuit and in this case to have costs incurred relating to recovery of court costs is a serious obstacle to justice. The same can be said about the content of Article 108 of CPC RK, under which the payment of amounts of money to witnesses, experts, specialists, as well as payment for performance of expert examination by judicial examination bodies shall be made by the Party, which filed the request. Even in the case if summoning of witness to a court, commissioning of examination, invitation of a specialist shall be initiated by the court, the required sums shall be paid by the Parties in equal parts. It should be noted that lack financial capacity with either the plaintiff or the defendant to pay, for example, for performance of an examination appointed by a court, the court, depending on which Party avoids the examination and what it actually matters for the Party, shall have the right to recognize the fact, for clarification of which the examination was commissioned, as the established one or the disproved one (Part 8 of Article 91 of Code of Civil Procedure Code). The court shall be obliged when issuing a ruling to apportion the court costs between the parties. The court ruling on the issues related to the court costs: the parties have the right to appeal against to a higher court.

Analysis of the content of Article 501 of the Tax Code exempting physical and juridical entities from payment of state fees in court, who have applied to the court to protect the rights and legitimate interests of others, while the analysis of Article 56 of the Code of Civil Procedure of Kazakhstan, which entitles organizations or individuals to apply to court through filing a lawsuit to protect the rights, freedoms and lawful interests of other persons, upon their request, as well as the public (community?) or the state interests, eventually brings to the issue of whether those provisions establish the conditions for access to justice for environmental public organizations, for example, a claim for the protection of rights and interests of inhabitants of a particular region, where it is planned to place an environmentally hazardous facility, i.e. in defense of unspecified number of persons.

Firstly, since Article 56 of the Code of Civil Procedure is a reference provision, it is necessary to find out which events and which law was meant by the legislator, referring to them in Article 56 of the Code of Civil Procedure of Kazakhstan, as the mandatory prerequisite for going to court to protect the rights of others. If we turn to the law “On Public Associations”, it provides public associations the right to go to court to protect the rights and legitimate interests of only the members of their organization.

The presence in this norm of the mandatory prerequisite for its application as “in the cases provided for by law”, points out that this provision does not apply to environmental public organizations, because the law “On Public Associations” does not provide for the right of a public association to go to court to protect the

rights other persons, public and state interests. This is also indicated by the content of Article 8 of the Code of Civil Procedure of Kazakhstan, according to which the right to apply to court to protect the interests of unspecified persons arises from the direct reference in legislation.

Meanwhile, Kazakhstan has experience in legislative recognition of the right of public associations to go to court to protect the rights and legitimate interests of an indefinite number of persons. Thus, the law of the Kazakh SSR on June 5, 1991 “On Protection of Consumer Rights” Article 23 public consumer organizations were granted the right on their own or through a prosecutor to sue in court for recognition of the actions the seller, the manufacturer (their representatives), the artist, as well as the management body illegal in relation to an uncertain range of consumers (collective lawsuit) and termination of these actions. The law expired May 4, 2010, when a new law “On Protection of Consumers' Rights” was adopted, which also established the right of public associations of consumers to sue in court for the benefit of consumers, including the benefit of an indefinite number of customers. Experience of the drafters of the Law “On Protection of Consumers' Rights” can be used also for bringing the Law “On Public Associations” into line with the Aarhus Convention.

In the analysis of Article 56 of the Code of Civil Procedure of Kazakhstan, one can not but pay attention to the presence in it of such a notion as “the protection of the public and state interests.” However the Procedure Law does not clarify what exactly is included in the range of public and state interests.

It should be recognized that absence in Procedural Law of clearly defined process procedures for access to justice on environmental disputes, creates legal problems and barriers to public access to justice.

For the full implementation of the Aarhus Convention and the public's right to access to justice, it is necessary to provide public associations with the right to go to court to protect the rights of others, an indefinite number of persons, public and the state interests, and for this purpose it is necessary to introduce appropriate amendments and additions into the Law “On Public Associations”, the Environmental Code and the Civil Procedure Code of the Republic of Kazakhstan.

*In line with the Aarhus Convention (Article 9 paragraph 3) Each Party shall ensure that representatives of the public, meeting the criteria stipulated in its national legislation, if any, have access to administrative or judicial procedures to contest acts and omissions of private persons and public authorities, which violate provisions of the national environmental legislation.*

Procedure for contesting decisions and actions (or inaction) of state authorities, officials and public employees, is provided by Chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan. Thus, in accordance with Article 278 of CPC RK, a citizen and a juridical entity have the right to contest the decision, the action (or inaction) of the state agency, local government, public association, organization, official, public servant directly in court.

According to article 279 of the Code of Civil Procedure of Kazakhstan, to the decisions, actions (or inaction) of state authorities, local authorities, associations, organizations, officials, civil servants, challenged in court, are attributed collegial and individual decisions and actions (or inaction), as the result of which:

- 1) rights, freedoms and legitimate interests of citizens and legal entities were violated;
- 2) obstacles exercising by citizens their rights and freedoms, as well as the juridical entity's rights and interests protected by law were established;
- 3) a citizen or juridical entity was unlawfully imposed any duty, or they were illegally brought to justice.

Thus, the current procedural law provides for the right of citizens and civil society organizations to go to court and contest the decisions, actions (or inaction) of the state bodies, officials and civil servants, and other agencies, organizations and public officials who violate provisions of the national environmental legislation.

In order to ensure uniform interpretation and application of legislation by courts when examining allegations of physical and juridical entities according to the procedure and based on the grounds set out in Chapter 27 of the Civil Procedure Code, the Supreme Court of the Republic of Kazakhstan adopted a normative resolution of December 24, 2010 № 20 “On some issues of applying provisions of chapter 27 of the Civil Procedure Code of the Republic of Kazakhstan by courts”, which gives the following explanation:

Decision of a state agency, local government, action (inaction) of an official or public servant may be contested in court if it is believed by the complainant that:

- 1) the his/her personal rights, freedoms and legitimate interests belonging to him were violated;
- 2) obstacles to exercising by him/her his/her subjective rights, freedoms or legitimate interests; were established;
- 3) any responsibility was illegitimately imposed on him/her.

It is obvious that by this explanation the Supreme Court in fact states that in Kazakhstan public associations do not have the right to contest in court actions (inaction) of the state agency, local government, public association, organization, official, public employee, if:

- personal rights, freedoms and legitimate interests that belong not to him, but to others were violated;

- obstacles were established for exercising not by not him/her of not his/her subjective rights, freedoms or legitimate interests, but by another person,

3) any responsibility was imposed not on him/her, but on another person.

Then, according to Article 280 of the Code of Civil Procedure of Kazakhstan, a citizen and a juridical entity may apply to a court within three months from the date when they became aware of the violation of their rights, freedoms and legitimate interests. Failure to file the application within the three-month period is not the ground for a court to refuse to accept the application. The reasons for missing the term are investigated in a court sitting when considering the application essentially and may be one of the grounds for denial to satisfy the application.

It appears that the three months period established by the Procedural Law for filing the case in court limits the public's right to access to justice, because it does not take into account the time required for the public for verification of the obtained environmental information through an official request. In accordance with the law of the Republic of Kazakhstan "On the order of consideration of physical and juridical entities", the request can be processed within thirty days and can be extended for another thirty days and, in some cases for an indefinite period of time, until its final execution. Therefore, with regard to the appeal of actions (or inaction) that violate the law relating to environment, the period of time for applying to the court should be longer.

The principle of presumption of environmental threat from the planned economic and other activities, and mandatory nature of assessment of impact on environment and human health when making decisions on its implementation, established in Article 5 of the Environmental Code, needs to be further developed. Currently this principle is not enshrined in the Civil Procedure Code and is not applied by courts in their law enforcement practice because by virtue of Article 65 of CPC RK, each Party must prove to the court the circumstances relied on as grounds for their claims and objections.

Far from unambiguous assessment, from the perspective of providing effective legal protection tools causes the established by the Civil Procedure Code of the

Republic of Kazakhstan, the procedure of revision of judgments in the exercise of judicial review (Article 393 and Article 394 of Code of Civil Procedure Code). Access to the Supervisory Board of the Supreme Court and the proceedings of the Supreme Court's Supervisory Board is only possible with the consent of 3 judges, who previously considered the complaint and have the right to transfer or not to transfer the case to the Supervisory Board. The citizens and juridical entities when claiming a violation of their rights, cannot directly initiate such a review. The decision of 3 judges, made within the framework of the surveillance procedure in the Supreme Court shall be final and not subject to appeal, which creates favorable conditions for corruption. It appears that at the stage of the preliminary examination, these 3 judges should only consider issues of compliance or non-compliance of the application and the documents attached thereto with the requirements of CPC RK, but not the issues of legality of the appealed court rulings, which should only be considered by the full Supervisory Board of the Supreme Court.

### ***Conclusions and recommendations:***

1. Not all provisions of the Aarhus Convention have been implemented in the current Civil Procedure Law of the Republic of Kazakhstan, the evidence of this is lack of concepts such as “the public”, “the public concerned”, “interested persons”, which does not contribute to increased access of the “public concerned” to justice for protection of rights and legal interests of an indefinite number of persons, as well as the environmental legislation.
2. The right of public associations of environmental profile to appeal to court to protect the rights and interests of an indefinite number of persons is not enshrined in the legislation of the Republic of Kazakhstan.
3. Assistance mechanisms to remove or reduce financial barriers to access to justice for the public within the framework of implementation of the Convention in the Republic of Kazakhstan has not yet been established.
4. For public ecological organizations the “fear” losing a lawsuit and in this case to bear the costs incurred for recover of court costs is a serious obstacle to justice.
5. The period of time for application to the Court, the Code of Civil Procedure Article 280 of Kazakhstan, in relation to the appeal of actions (or inaction) which violate provisions of the legislation relating to environment, should be longer.
6. Recommendations on limiting the principle of adversarial nature of the parties in relation to consideration of disputes relating to protection of

environment, namely application of the presumption of threat of the proposed activity and the presumption of guilt of the polluting party seem to be highly relevant.

7. For improvement of the current legislation on public access to justice, implementation of provisions of the Aarhus Convention, the Environmental Code, it is necessary to establish in the Law “On Public Associations” and in the Civil Procedure Code the right of associations to go to court to protect the public interest and the rights and legitimate interests of the indefinite public.

Sources:

[http://www.aarhus.kz/index.php?option=com\\_content&task=view&id=444](http://www.aarhus.kz/index.php?option=com_content&task=view&id=444)

<http://www.eco.gov.kz/new2012/inform/>