

14. The plaintiffs, in cases on involving compensation for damage caused to the environment, as well as on limiting (suspension) and termination of economic and other activities of individuals and entities that have a negative impact on the environment, human life and health, can be the authorized body in the field of environment and specially authorized state bodies in the sphere of environmental protection, protection, reproduction and use of natural resources, their territorial subdivisions, public prosecutors within their powers.

Individuals have the right to bring an action to court for damages caused to their life and health and property as a result of violation of legislation on environment, demands on the abolition of the decisions on placing, construction, reconstruction and commissioning of enterprises, structures and other environmentally hazardous facilities, as well as on limiting and termination of economic and other activities of individuals and entities that have a negative impact on the environment, human life and health (article 13 of EC).

Public associations, by virtue of Article 14 of EC, have the rights to demand through the courts the abolition of the decisions on placing, construction, reconstruction and commissioning of enterprises, structures and other environmentally hazardous facilities, on restriction, suspension and termination of economic and other activity of physical persons and legal entities that have a negative impact on the environment, human life and health, to bring an action in court for damages caused to life, health and (or) property of citizens as a result of violation of environmental legislation, as well as to protect the rights, freedoms and lawful interests of individuals and legal entities including unspecified persons (*actio popularis*) on the protection of the environment and use of natural resources.

They have rights to direct the court's attention, that in accordance with subparagraph 8-2) of Article 541 of the Code of the Republic of Kazakhstan «On taxes and other obligatory payments to the budget (Tax code)» the plaintiffs (applicants) on lawsuits (claims) on protection of the rights, freedoms and lawful interests of individuals and legal entities, including the benefit of *actio popularis* for the protection of the environment and use of natural resources, are free from the state duty when filing a claim in court.

15. Natural and legal persons shall have the right in court to challenge the conclusion of the **State Environmental Expertize** (hereinafter - **SEE**, Article 57 of EC). The comments on conclusion of SEE shall not be allowed, the cancellation of its conclusion shall be carried out exclusively in the courts (article 51 paragraph 7 of the EC).

The list of objects subject to mandatory SEE, established by Article 47 of EC. By virtue of Article 51 of EC operating without a positive conclusion of the SEE is a violation of environmental legislation.

Pursuant to paragraphs 9 and 13 of the Rules of SEE approved by Order of the Minister of Energy of the Republic of Kazakhstan dated February 16, 2015 No 100, the files submitted for examination must include the results of public opinion, among other documents. The conclusion of sectoral assessments carried out by other state bodies, as well as the conclusion of external experts with a recommendation shall be taken into account.

Differences in the implementation of the SEE shall be considered by negotiation or by the courts (Article 58 of EC). In resolving such disputes, the courts should be guided by environmental legislation, **the provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Issues Environment** (Aarhus, June 25, 1998, ratified by the Law of the Republic of Kazakhstan dated October 23, 2000 No 92-II «On ratification of the Convention on access to information, public participation in decision-making and access to justice on environmental matters» (**hereinafter - the Aarhus Convention**)).

16. To explain the courts that for all kinds of economic and other activities that may have a direct or indirect impact on the environment, life and health, there shall be a mandatory environmental impact assessment (hereinafter - EIA), the stage and procedure of which shall be determined by Chapter 6 of EC. In accordance with Articles 35 and 38 of EC within the EIA the possible consequences of the economic and other activity on the environment, life and human health are assessed, measures are to be developed to prevent adverse effects (destruction, degradation, damage and depletion of natural ecological systems and

natural resources), to improve the environment taking into account the requirements of environmental legislation.

EIA is carried out by individuals and legal entities who received a license to perform activities and services in the field of environmental protection. The organization and financing of the EIA shall be provided by the customer (initiator) of the planned activities.

According to the rules for public hearings, approved by order of the Minister of Environment of the Republic of Kazakhstan dated May 7, 2007 No 135-p, a public hearing to discuss the EIA files shall be carried out in an open meeting or interview. The customer (initiator) of the planned administrative, economic or other activities shall make agree time and venue of the public hearings with the local executive bodies in advance and shall publish an advertisement in the media about the conducting the public hearings with announcing the time and place of their meeting.

Advertising shall be carried out in the State and Russian languages for 20 days prior to the public hearings.

In accordance with Article 57-2 of EC in terms of project the implementation of which can directly affect the environment, life and health of citizens, and during the production of SEE, it is necessary to hold public hearings, the organization, procedure and the fixing of results of which is within the competence of the local executive bodies (Article 20 of EC).

17. To explain the courts that by virtue of Article 14 of EC, the public associations in the implementation of activities in the field of environmental protection shall be entitled to receive timely, complete and reliable environmental information from the state bodies and organizations, in accordance with Articles 163, 164 and 165 of EC. The environmental information is provided in accordance with the Law of the Republic of Kazakhstan dated January 12, 2007 No 221-III «On the Order of Consideration of Physical and Legal Persons» and with the standard of the state service «Provision of environmental information» approved on Order of the Minister of Energy of the Republic of Kazakhstan dated April 23, 2015 No 301, and by the regulations of

the state service «Provision of Environmental Information» approved on Order of the Republic of Kazakhstan Minister of Energy dated May 22, 2015 No 369.

According to Article 17 of the Law of the Republic of Kazakhstan dated March 15, 1999 No 349-I «On State Secrets», the information on the state of the environment can not be classified.

State bodies at request of the public on environmental information must provide it with the requirements of Chapter 21 of EC, the Law of the Republic of Kazakhstan dated November 16, 2015 No 401-V «On Access to Information» and Article 4 of the Aarhus Convention. Interested parties may also obtain the relevant information from the State Environmental Fund of Environmental Information in accordance with the Rules of the State Fund for Environmental Information, approved by Resolution of the Government of the Republic of Kazakhstan from October 13, 2016 No 589.

In disputes of this type of case it should be borne in mind that the provisions of Article 9 of the Aarhus Convention in relation to disputes concerning access of the public (individuals and entities) on the following:

- violations of the right to public access to environmental information;
- violations of the right to public participation in decision-making on the proposed economic activity (as part of the EIA procedure and SEE);
- appeal against decisions, actions (inaction) of state and non-state bodies, organizations and individuals related to the violation of environmental legislation.

18. The courts should take into account that, because of the requirements of Article 126 of the Civil Code 1017 (on proprietary and trade secret, undisclosed information), the applicant may be denied access to information on installation of power, raw material base, the number of work shifts, the financing of environmental protection measures and other data. Failure to obtain environmental information regarding the information and data with limited access may be based also on the following legislation: the Criminal Procedure Code of the Republic of Kazakhstan (the secret of operatively-search activity, inquiry and preliminary investigation), the laws of the Republic of Kazakhstan dated March 19, 2010 No

257-IV «On State Statistics» (guarantee to natural and legal persons of confidentiality of primary statistical data), dated November 24, 2015 No 418-V «On Informatization» (invasion of privacy).