

# International Environmental Obligations of the Republic of Kazakhstan<sup>1</sup> (Analytical Review)

**Larisa A. Yemeliyanova**

*Senior Lawyer of Aequitas*

The article reviews the international environmental obligations of the Republic of Kazakhstan. The author provides a general overview of environmentally-relevant international treaties and other documents and looks into how the country's international environmental obligations influence its national environmental legislation.

Key words: international treaties, environmental law, legislation, environment, environmental protection, international obligations, green economy, obligations, emissions, mechanism of inter-state cooperation.

## **Briefly on International Environmental Law and the Participation of Kazakhstan in its Development**

The international environmental law (the international law on protection of environment) is one of the most important areas of the international law that have a significant impact on the national legislation of many countries.

The generally accepted environmental principles and directions of the international cooperation are determined by the Stockholm Declaration on Environment (1972), the World Charter for Nature (1982), the Declaration on Environment and Development (Rio de Janeiro, 1992),

<sup>1</sup> *Статья подготовлена по материалам исследования, проведённого ТОО «Юридическая фирма «AEQUITAS» в 2012 году по вопросу о влиянии международных обязательств Республики Казахстан на национальное законодательство в сфере эмиссий загрязняющих веществ в окружающую среду. / This article was prepared based on a study conducted by AEQUITAS LLP in 2012 regarding the impact of the international commitments of the Republic of Kazakhstan on the national legislation on emissions of pollutants into the environment.*

"An Agenda for the 21<sup>st</sup> Century" (Rio de Janeiro, 1992), the declarations of the Millennium Summit (New York, 2000), the World Summit on Sustainable Development (Johannesburg, 2002)<sup>2</sup> and other international acts. These acts have a huge international reputation and are in implementation both in international conventions and national laws of many states, including the Republic of Kazakhstan (hereinafter the "RK").

International environmental agreements cover all basic natural resources, having invaluable significance for preserving life of all mankind (water, land, living resources, the atmosphere)<sup>3</sup>.

Kazakhstan is an active member and participant of various international committees and processes aimed at the development and implementation of international arrangements on the protection of the environment and sustainable development at the global and regional levels. Among them is the Commission on Sustainable Development of the UN; the Interstate Commission for Sustainable Development in Central Asia; the Eurasian Regional Network of the World Business Council for Sustainable Development; the Interstate Council on Hydrometeorology of the CIS; processes "Environment for Europe" and "Environment and Sustainable Development for Asia". The cooperation is being developing with the United Nations Development Program, the World Wildlife Fund (WWF) and other international organisations.

One of the global international initiatives of Kazakhstan in the field of environmental protection is the Green Bridge Partnership Program. The program was presented and enjoyed the international support at the 3<sup>rd</sup> Astana Economic Forum (Astana, 2010); 4<sup>th</sup> Conference of Ministers on Environment and Development in the Asia-Pacific Region (Astana, 2010)<sup>4</sup>; within the framework of the UN General Assembly (2011) and then, at the UN Conference on Sustainable Development "Rio+20" (Rio de Janeiro, 2012)<sup>5</sup>. The Program was supported by the members of the UN

<sup>2</sup> These documents are available on the UN website <http://www.un.org/ru> (2 October 2013)

<sup>3</sup> International environmental law is not codified and presented a large number of international treaties and acts of the "soft" law advisory nature, having major global importance (such as the Declaration on Environment and Development of 1992, the Stockholm Declaration on the Environment in 1972, and others). In this regard, the proposals are being made for its global codification. See Y. S. Shemshuchenko Plus greening the entire Earth (problems of codification of international environmental law). *Environmental Law*, 2009, No. 2/3. Pp. 82-84.

<sup>4</sup> A. G. Dernovoy. Major international environmental initiatives of Kazakhstan. Source: [http://aarhus.kz/index.php?option=com\\_content&task=view&id=418](http://aarhus.kz/index.php?option=com_content&task=view&id=418) (18 October 2012)

<sup>5</sup> Outcome document of the UN Conference on Sustainable Development "Rio +20", entitled "The future we want", approved by the UN General Assembly Resolution dated 27 July 2012, contains the following evaluation of the program "Green Bridge": "we welcome the regional and interregional initiatives of sustainable development, such as the Green Bridge Partnership Program, which is voluntary and open to all partners" (paragraph 102). Source: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/476/12/PDF/N1147612.pdf?OpenElement> (11 November 2013), <http://sustainabledevelopment.un.org/futurewewant.html> (11 November 2013).

Economic and Social Commission for Asia and the Pacific (ESCAP) and the UN Economic Commission for Europe (UNECE)<sup>6</sup>.

On 30 September 2013, the International Conference on the Green Bridge Partnership Programme organised by the RK Ministry of Environmental Protection (hereinafter the "MEP")<sup>7</sup> in partnership with the UN Development Program was held in Astana. As an outcome of the Conference, 8 countries – Kazakhstan, Russia, Kyrgyzstan, Belarus, Mongolia, Georgia, Germany and Montenegro signed the Charter of Green Bridge Partnership Program<sup>8</sup>. Subsequently, Latvia joined the Charter and several other countries are considering joining.

The Charter provides for, among other things, the creation of an international association for the purpose of implementation of the Green Bridge Partnership Program, as well as the creation of an information-analytical institute in the Republic of Kazakhstan for research, development and technology transfer and the development of incubators<sup>9</sup>.

### Participation of the Republic of Kazakhstan in the international treaties

It should be emphasised that Kazakhstan is a party to a significant number of the international environmental conventions. In addition, the cooperation agreements and other international agreements on environmental issues were signed with a number of countries.

Altogether, according to our estimate, more than 60 international treaties of the RK directly or indirectly affect the sphere of protection of the environment (including the issues of emissions into the environment, the protection of the ozone layer from greenhouse gas emissions, the prevention of pollution from ships, trade and transportation of hazardous chemicals, the industrial safety at hazardous production facilities and the prevention of accidents, transboundary impacts, etc.)<sup>10</sup>.

<sup>6</sup> Kazakhstan called "Rio+20" to implement the Green Bridge initiative. Source: <http://www.newskaz.ru/economy/20120621/3374831.html> (27 September 2013).

<sup>7</sup> The Ministry of Environment in October 2013 became the Ministry of Environment and Water Resources of the Republic of Kazakhstan. For purposes of convenience, the acronym "MEP" used throughout herein applies to both the Ministry of Environment and the Ministry of Environment and Water Resources of the Republic of Kazakhstan.

<sup>8</sup> Concerning the International Conference on Partnership Program "Green Bridge" and the international specialised exhibition "Astana EXPO -2017". Source: <http://www.eco.gov.kz/new2012/2013/09/3126-196/> (29 October 2013). Kazakhstan signed the Charter of Green Bridge Partnership Program. Source: <http://www.zakon.kz/kazakhstan/4579089-v-kazakhstane-podpisali-khartiju-a.html> (29 October 2013).

<sup>9</sup> Source: <http://gbpp.org/ru/charter-of-the-green-bridge-partnership-program/> (11 November 2013).

<sup>10</sup> A list of 26 international treaties, including the major conventions and additional treaties (amendments, protocols) to them is contained on the MEP's website - List of environmental conventions. Source: <http://www.eco.gov.kz/new2012/activity-of-state-authority/international-organisation-cooperation/3220-00/> (27 September 2013). It should be noted that this list is not an exhaustive list of international treaties the Republic of Kazakhstan in the field of environmental protection.

The work is continuing on the preparation for accession to other international treaties, such as certain protocols to the Convention on Long-range Transboundary Air Pollution (Geneva, 1979)<sup>11</sup>, as well as for joining the international organizations (OECD, WTO)<sup>12</sup>.

Code No. 212 -III of the RK dated 9 January 2007 No. "Environmental Code of the Republic of Kazakhstan " (hereinafter the "Environmental Code" or the "EC") establishes the priority of international treaties ratified by the Republic of Kazakhstan over the provisions of the Code (Article 2.2 of the EC).

Those international treaties shall be subject to ratification, the subject-matter of which are the rights and freedoms of a human-being and citizen; the implementation of which requires a change in the existing or the adoption of new laws; that establish rules other than those provided for by the laws of the RK; and some other (Article 11 of Law No. 54 -III of the RK dated 30 May 2005 "On International Treaties of the Republic of Kazakhstan").

In accordance with the resolution of the Constitutional Council of the Republic of Kazakhstan "On Official Interpretation of Article 54.7 of the RK Constitution " dated 18 May 2006, the acts of the Republic of Kazakhstan on ratification of international treaties and acts of the Republic of Kazakhstan on accession to international treaties are equal in their legal force and legal consequences (paragraph 2). In this regard, the international treaties, the binding nature of which is set with respect to Kazakhstan by the normative legal acts on accession to international treaties adopted by the Parliament of the Republic of Kazakhstan are equated to international treaties ratified by the RK<sup>13</sup>.

By our count, over 30 ratified and equivalent international treaties of the RK relate to the environmental issues.

<sup>11</sup> According to the report of Kazakhstan to the Convention on Long-range Transboundary Air Pollution, 1979 for 2010, the priority for joining is given to: (i) the EMEP Protocol on Long-term Financing of the Cooperative Programme for Monitoring and Evaluation of Air Pollutants in Europe (EMEP), adopted in Geneva in 1984; (ii) The 1985 Helsinki Protocol on the reduction of sulphur emissions or their transboundary fluxes by at least 30%; (iii) The 1988 Sofia Protocol concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes; (iv) the 1998 Aarhus Protocol on Heavy Metals (Report Contract No. 05-03-139 on 2 June 2011 "A report of Kazakhstan to the Convention on Long-range Transboundary Air Pollution in 2010". Source: [http://www.eco.gov.kz/new2012/wp-content/uploads/doklady/zagr\\_vozdux2010.htm](http://www.eco.gov.kz/new2012/wp-content/uploads/doklady/zagr_vozdux2010.htm) (27 September 2013).

<sup>12</sup> For example, in 2011, the approaches were approved to Kazakhstan's accession to the Organisation for Economic Cooperation and Development (OECD). See: Approved approaches of Kazakhstan's accession to the OECD. News agency "Today". Source: <http://www.zakon.kz/4446566-utverzhdenny-podkhody-vstupleniya.html> (27 September 2013). It is possible that the entry into this organisation may result, as in the case of Russia, the need to change the environmental legislation. The conditions for the Russia's accession include the implementation of fundamental reforms of environmental legislation. See: A. Kodolova On Compensation (liquidation) harm to the environment, including associated with past economic activity. *Economy and Law*, 2012, No. 8. Pp. 26-40.

<sup>13</sup> P. 5 Regulatory Resolution of the Supreme Court on July 10, 2008 No. 1 "On the Application of International Treaties of the Republic of Kazakhstan ", as amended.

The mechanism of international cooperation in the field of environmental protection and nature use is established by Article 192 of the Environmental Code. It provides for the involvement of the Republic of Kazakhstan, in accordance with its obligations under international treaties, in a number of international and cross-border procedures for the exchange of environmental information; a joint environmental monitoring and regulation of environmental impacts; application of measures of responsibility for damage to the environment of other states or regions beyond the Republic of Kazakhstan, and other issues.

### Classification of international treaties of the RK

By the object of legal regulation criterion, all environmental treaties of the RK can be organized into three groups<sup>14</sup>:

1. **Environment-protection international treaties** governing the protection of the environment, as a whole. This group of treaties deals with the negative impact of economic and other activities on the condition of the whole environment, without distinguishing adverse effects on separate natural objects.

We may assign to this group, for example, the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, Finland, 25 February 1991, Kazakhstan joined pursuant to RK Law No. 86-II dated 21 October 2000 ); the Stockholm Convention on Persistent Organic Pollutants (Stockholm, 22 May 2001; the Convention was ratified by Law No. 259-III of RK dated 7 June 2007); the Energy Charter Treaty (Lisbon, 17 December 1994; the Treaty was ratified by Presidential Decree No. 2537 dated 18 October 1995 ) (hereinafter the "ECT"); the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel, 22 March 1989; Kazakhstan joined pursuant to RK Law No. 389-II dated 10 February 2003 ); various cooperation agreements between Kazakhstan and other countries, and other international treaties.

2. **Resource-conserving international treaties** governing the protection of individual natural objects (resources), the negative change of which is of the international importance.

Among the group of treaties in question the international treaties for the protection of certain types of natural resources may be distinguished.

**Air, climate and ozone layer protection** – for example, the Convention on Long-range Transboundary Air Pollution (Geneva, November 13, 1979, Kazakhstan joined pursuant to RK Law No. 89 -II dated 23 October 2000); the Vienna Convention

<sup>14</sup> This classification was proposed S. Sh. Tyulebekova (See: S. Sh. Tyulebekova Legal enforcement of obligations of the Republic of Kazakhstan on environmental conventions. Dissertation for the degree of candidate of legal sciences. Almaty: 2003. 33.). The classification used in this article, is applied subject to the adjustments to take account of particular research topic.

for the Protection of the Ozone Layer (Vienna, 22 March 1985, Kazakhstan joined pursuant to RK Law No. 177-1 dated 30 October 1997); Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto, 11 December 1997, the Protocol was ratified by Law No. 144 -IV of the RK dated 26 March 2009 and entered into force for the Republic of Kazakhstan on 17 September 2009).

**Protection of living resources** – e.g., the Convention on Biological Diversity (Rio de Janeiro, 5 June 1992, the Convention was ratified by the Republic of Kazakhstan in accordance with Resolution No. 918 of the Cabinet of Ministers of the Republic of Kazakhstan dated 19 August 1994); the Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran, 4 November 2003; the treaty was ratified by Law No.97 -III of the RK dated 13 December 2005) (hereinafter the “Tehran Convention on the Caspian Sea”).

Land resources and subsurface conservation – for example, the Mining Charter of the member states of the Commonwealth of Independent States, Moscow, 27 March 1997.

**Water conservation** – for example, the Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992; the Convention was ratified by Law No. 94 -II of the RK dated 23 October 2000); the Tehran Convention on the Caspian Sea<sup>15</sup>.

**3. Human rights conventions** governing the rights of the various persons in the field of environmental protection. This group includes the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998; the Convention was ratified by Law No. 92-II of RK dated 23 October 2000) (hereinafter the “Aarhus Convention”)<sup>16</sup>.

Some authors propose other classification, highlighting the regulation of subject areas, such as, for example (1) the limitation of harmful effects on the environment; (2) the establishment of an ecologically-sound mode of use of natural resources; (3) the international protection of natural monuments and wildlife reserves; (4) the regulation of scientific and technical cooperation of states concerning the protection of the environment<sup>17</sup>.

It should be noted that all the above spheres of international regulation are covered by the Kazakhstan legislation as well.

<sup>15</sup> With regard to the Tehran Convention on Caspian, E. E. Vylegzhaniina notes its importance for the formation of the modern international legal regime for the Caspian subsurface. The Convention provides for the ecosystem approach and the most advanced international legal principles. (See: E. E. Vylegzhaniina. International legal approaches to environmental protection in the subsurface. Oil Gas Law, 2007, No. 4. Pp. 48.)

<sup>16</sup> “The main objective of the Aarhus Convention is the public access to environmentally relevant information, the implementation of the citizens’ right to participate in matters relating to the environment, provide assistance to citizens in the enjoyment of these rights. In addition, as one of the objectives of the Convention is to ensure accountability and transparency in decision making” (E. E. Vylegzhaniina. International legal approaches... P. 45).

<sup>17</sup> M. E. Pevzner. Mining Law. Textbook for high schools. 2nd ed., Rev. and add. MGTU. 2001. T. 1. 375 p.

## Classification of the RK obligations under international treaties

According to the results of the analysis of international treaties of the RK, we have identified the following categories of major Kazakhstan’s obligations under international treaties<sup>18</sup>:

### 1. General obligations to protect the environment or a particular resource

As part of these commitments, Kazakhstan shall:

a) constantly strive to achieve certain goals in the field of ecology, including the prevention of damage to the environment – the Convention on Biological Diversity, 1992p the prevention of significant adverse effects – the Convention on Environmental Impact Assessment in a Transboundary Context of 1991: the minimisation of harmful effects on the environment – the ECT;

b) to take appropriate measures to achieve the stated objectives, including:

to develop and implement programs and policies – the Convention on Long-range Transboundary Air Pollution, 1979;

to apply the best or the most efficient technologies – the ECT, the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992, the Convention on Long-range Transboundary Air Pollution, 1979;

to take measures to prevent environmental disasters and accidents – the Agreement on Cooperation in the Field of Ecology and Environmental Protection, Moscow, 8 February 1992, as amended (hereinafter the “Moscow Cooperation Agreement”); the Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992; Kazakhstan joined pursuant to Law No. 91-II of the RK dated 23.10.2000);

to take all necessary measures to prevent, reduce and control pollution of the Caspian Sea – the Tehran Convention on the Caspian Sea.

### 2. Specific obligations on the liquidation of production, exports and imports, reducing or prevention of emissions of certain pollutants

Such obligations are provided for by the Stockholm Convention on Persistent Organic Pollutants, 2001, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989, the Kyoto Protocol to the United Nations Framework Convention on Climate Change in 1997.

<sup>18</sup> Due to the limited format of article, further are the examples of some of the large number of international treaties of the RK by groups commitments.

### **3. Obligations on the environmental impact assessment of certain activities, establishment of a licensing system (for pollution of environment, export and import of certain pollutants, etc.)**

The Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, 1991) contains a number of specific commitments of this group.

The Convention on the Protection and Use of Transboundary Watercourses and International Lakes, 1992 provides for the impact assessment and authorisation procedure for wastewater discharge. The Moscow Cooperation Agreement provides for the environmental expert review of programs and other projects. The need to assess the impact on the marine environment of hazardous activities is contained in the Tehran Convention on the Caspian Sea.

### **4. Obligations to collect environmental information and provide public access**

The main international document regulating obligations of this group is the Aarhus Convention. Other international treaties also impose similar obligations (the ECT, the Moscow Cooperation Agreement, the Convention on the Transboundary Effects of Industrial Accidents, 1992, the Convention on Biological Diversity, 1992).

### **5. Obligations to eliminate environmental damage**

The Convention on Biological Diversity, 1992 provides for the obligation of the member states to take measures to rehabilitate and restore degraded ecosystems, to the extent possible and appropriate. According to the Moscow Cooperation Agreement, it is necessary to take measures for the reproduction of living resources, preservation and restoration of biological diversity. The Tehran Convention on the Caspian Sea obliges to take measures to restore the environment of the Caspian Sea in the event of accidents or natural disasters.

### **6. Obligations to cooperate with other countries and exchange information**

These commitments are contained in almost every of the considered international treaties, making the environmental policy of the RK transparent to the international community and imposing the obligations to consider the opinion and the principles of the international environmental law in its rulemaking and enforcement activities.

We refer your attention to the Moscow Cooperation Agreement providing for the harmonization of environmental legislation of 11 CIS countries, as well as the Mining Charter of the member states of the Commonwealth of Independent States (Moscow, 27 March 1997) providing for the harmonization of legislation in the field of study, exploration, use and protection of subsurface.

Among other obligations of the category, we can note the commitments to exchange technologies (the ECT, various cooperation agreements, the Tehran Convention on the Caspian Sea).

### **7. Other obligations**

Of course, the content of international treaties discussed above is not satisfied by the above categories of obligations, and the classification can be continued. Among other obligations, for example, we can note the commitments to promote scientific activities that occur in many international treaties (the ECT, various cooperation agreements, the Tehran Convention on the Caspian Sea).

### **Reflection of international treaties in the national (Kazakhstan) legislation: general characteristics of the issue**

The international obligations assumed by the RK have a significant impact on the national environmental legislation, one of the principles of which is to harmonise the environmental legislation of the RK with the principles and rules of the international law (Article 5.14 of the EC), as well as the fulfilment in good faith of international obligations (Article 189.1 of the EC).

Some of the principles of international law were incorporated into the national legislation, such as the principles of preventing damage to the environment of other states, the precautionary and preventive measures, the amicable settlement of international disputes, the polluter's liability for the costs, etc. (Article 189 of the EC), stipulated by the Declaration on Environment and Development (Rio de Janeiro, 1992).

It should be noted that the "polluter pays" principle is a key principle of the environmental law of the European Union, and is considered, to a larger extent, by the European and international law within the concept of strict liability, i.e., the liability not only for the "improper", but also for the "proper" damage to the environment<sup>19</sup>.

The Environmental Code was developed, subject to the international obligations of the RK<sup>20</sup> and contains a significant number of provisions aimed at the implementation of its international obligations, including the environmental regulation (Chapter 4); the environmental impact assessment (Chapter 6); environmental expert review (Chapter 7);; environmental permits (Chapter 8); the environmental control (Section

<sup>19</sup> See E. E. Vylegzhanina. *International legal approaches...* P. 47.

<sup>20</sup> See Z. Kh. Baymoldina. *Ensuring environmental protection and ecological safety - to the level of international standards. Proceedings of the Fourth Atyrau Legal Conference. Atyrau: 2006. Pp. 22-28.*

*In judicial review for civil cases on the environment, including the application of international law (Bulletin of the Supreme Court of the Republic of Kazakhstan, 2009, No. 6. Pp. 4-11), it was noted that in 2009 the Environmental Code incorporated 18 provisions of international conventions on the protection of the environment (including the Convention on Biological Diversity, 1992, the Aarhus Convention, the Convention on Long-range Transboundary Air Pollution, 1979, etc.). Currently, this list is being increased.*

4); the environmental monitoring and cadastres (Section 5), including environmental information (Chapter 21); environmental education and awareness, research and international cooperation in the field of environmental protection (Section 7); environmental requirements in the implementation of economic and other activities in the state conservation area in the northern part of the Caspian Sea (Chapter 38); environmental requirements for waste management of production and consumption wastes (Chapter 42), and others.

### **Examples of measures for the implementation of international obligations**

The specific examples of specific measures for the implementation of international obligations in the environmental legislation of the RK may, in our opinion, be as follows:

1) a ban on the production and use of pesticides (insecticides), which are composed of persistent organic pollutants under the international treaties of the RK (Article 239.4-1 of the EC), followed from the Stockholm Convention on Persistent Organic Pollutants, 2001;

2) the environmental requirements for the production and use of potentially hazardous chemicals (Article 280 of the EC, as amended by the Law dated 3 December 2011 in pursuance of the Stockholm Convention on Persistent Organic Pollutants, 2001), the Rules for Handling of Persistent Organic Pollutants and Wastes Containing Thereof, approved by Order No. 40-p of the Minister of Environmental Protection dated 24 February 2012;

3) the system of permits for emissions into the environment, eventually toughening requirements to the users of natural resources in accordance with the accepted international obligations. In particular, the Law dated 3 December 2011 introduced a requirement that as from 1 January 2013, the permits for waste disposal and consumption figures include, at the moment of issuance, the indicators of waste management programs reflecting a decrease of accumulated waste volumes and reducing their adverse impact on the environment for the validity period of the permit. In terms of nature use, the permits for emissions into the environment, with respect to disposing of sulphur, include, at the moment of issuance, indicators of the program on reducing the accumulated volumes of sulphur and reducing its harmful effects on the environment for the period of validity of the permit Article 70.1-1 of the EC);

4) a ban on incineration on drilling platforms (barges), as well as other environmental requirements in the implementation of economic and other activities in the state conservation area in the northern part of the Caspian Sea (Article 262 of the EC) aimed at the implementation of the Tehran Convention on the Caspian Sea;

5) the establishment of three levels of hazardous wastes, subject to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 (Article 287.2 of the EC)<sup>21</sup>;

6) the introduction of the procedure for mandatory public hearings on the projects, the implementation of which may directly affect the environment and public health, including action plans for environmental protection, designed for object categories I and II to obtain permits for emissions into the environment (Article 57.3 of the EC);

7) the mandatory environmental impact assessment for all types of business and other activities that may have a direct or indirect impact on the environment and human health (Article 36.1 of the EC);

8) the right to free access to public government information resources of environmental information under the Aarhus Convention (Article 164.1 of the EC)<sup>22</sup>;

9) a number of regulations on the use of renewable energy sources<sup>23</sup> aimed potentially to reduce energy intensity of the economy and the negative impact on the environment of the sector of electric and thermal energy generation, which is generally consistent with the ECT, the Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (Lisbon, 17 December 1994, the Protocol was ratified by Presidential Decree No. 2537 dated 18 October 1995), the Convention on Long-range Transboundary Air Pollution, 1979;

10) the adoption of programs, plans and policies dealing with the environmental issues, including the implementation of international obligations of the RK (e.g., the MEP Strategic Plan for 2011-2015 approved by Government Resolution No. 98 dated 8 February 2011, the Strategic Plan for Development of Kazakhstan till 2020, approved by Presidential Decree No. 922 dated 1 February 2010, and others).

<sup>21</sup> It should be noted that in practice, the environmental experts note the extremely unfortunate waste classification by levels of danger (colour-coded), adopted in the current environmental legislation of Kazakhstan. In their opinion, it is necessary to divide the functional classification of hazardous wastes that remain in the country (in this case, to refuse from colour-coding and distribution by levels) and which are exported beyond it (in this case this should be guided by the provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous wastes and their Disposal, 1989).

<sup>22</sup> Provisions of the Aarhus Convention directly applied by the courts to resolve disputes related to the right of access to environmental information. See: Overview of jurisprudence for civil cases on the environment, including the application of international law. Bulletin of the Supreme Court of the Republic of Kazakhstan, 2009, No. 6. P.4 -11.

Decree No. 4gp-64-08 of the Supervisory Board of the Supreme Court dated 26 March 2008 stated that by virtue of Article 4.3 of the Constitution of the Republic of Kazakhstan, the Aarhus Convention (in particular Art. 4 for environmental information) are directly applicable, and environmental information, including information on emissions, which cannot be closed and must be transparent.

<sup>23</sup> RK Law of July 4, 2009 No. 165-IV "On Supporting the Use of Renewable Energy Sources", as amended, Law dated 4 July 2013 No. 128-V "On Introduction of Amendments to Certain Legislative Acts of the Republic of Kazakhstan on the Support to Use of Renewable Energy Sources" and other legislative acts.

The listed above legislative provisions represent only a small part of the legislation reflecting the adoption by the Republic of Kazakhstan of specific measures to meet the international obligations.

Kazakhstan monitors the performance of environmental international treaties, for which purpose the Department of International Environmental Agreements of the MEP was specifically established. The state cadastres are being kept and the reports on the implementation of the relevant conventions<sup>24</sup> and the national reports on the state of the environment are being run.

In June 2009, established the MEP established the National Aarhus Centre of the RK on the basis of RSE "Information-Analytical Centre for Environmental Protection" for the implementation of the Aarhus Convention<sup>25</sup>.

The Council for Sustainable Development of Kazakhstan was established under the auspice of the RK Government. Its functions are to develop proposals in various areas, including the conservation of biological diversity and cultural heritage; reduction of emissions, including greenhouse gases and ozone-depleting substances; access to drinking water, addressing transboundary, including water issues; use of new and environmentally-sound technologies; energy efficiency and conservation; radiation and chemical safety and waste management; prevention and reduction of environmental threats to the health of population<sup>26</sup>.

#### **Ways of development of national environmental legislation in accordance with the international obligations of Kazakhstan**

As you can see from the proposed classification of the RK obligations under the international treaties, Kazakhstan adopted a series of specific and general obligations in the field of environmental protection, including the obligations to protect the environment from harmful effects and to reduce pollution.

These commitments correspond to the RK Constitution, according to which the RK aims to protect the environment that is favourable for human life and health (Article 31).

The Environmental Code states that the achieving by the state of its goal to ensure favourable environment for human life and health is one of the environmental foundations of sustainable development of the RK (Article 4.1 of the EC).

<sup>24</sup> Separate reports are available at the MEP's website (Reports on international conventions of the RK. Source: <http://www.eco.gov.kz/new2012/3118-6/> (27 September 2013).

<sup>25</sup> Source: Website of the National Aarhus Centre. <http://aarhus.kz> (27 September 2013).

<sup>26</sup> See: Government Resolution dated 19 March 2004 No. 345 "On the Council for Sustainable Development of the Republic of Kazakhstan", as amended.

The legislation of Kazakhstan in the field of environmental protection and its individual objects is extensive and quite detailed. However, the law enforcement practices identify gaps and imperfection on specific issues of legal regulation<sup>27</sup>.

As a result of the general reviews of the international treaties of the RK and some national reports on their implementation, and also subject to the law enforcement practice and normative legal acts of the RK adopted recently, the following trends taking into account the international obligations of the Republic of Kazakhstan are evident:

- ❖ improvement of the national environmental legislation, including, for the transition to the "green economy";
- ❖ toughening of the national environmental requirements by a number of positions;
- ❖ strengthening of the state control in the sphere of environmental emissions to the environment.

The MEP Strategic Plan for 2011-2015, approved by Government Resolution No. 98 dated 8 February 2011, suggests amendments to the legislation concerning such issues as the management of municipal and industrial wastes; economic instruments for regulation and prevention of environmental pollution; environmental regulation and design; the system of environmental requirements to the implementation of economic activities in accordance with international standards; simplifying the permitting system; the transition to effective mechanisms for integrated environmental permits; the improving of the assessment of damage to the environment; the development of environmental monitoring.

The MEP Strategic Plan also provides for the establishment of the Unified State System of Monitoring the Environment and Natural Resources; the increase of the ratio of detected violations of environmental legislation; the creation of conditions for the formation of the principles of "green economy"; the decrease in the gross amount of various types of emissions; the destruction of persistent organic pollutants in the RK; the stabilization and improvement of environmental quality; the creation of conditions for the conservation and restoration of ecosystems; the application of increased demands to projects for the development of oil fields in the Caspian region; the continuation of work on the preparation of new draft protocols to the Tehran Convention, and other events.

The Strategic Plan for Development of Kazakhstan till 2020, approved by Presidential Decree No. 922 dated 1 February 2010, determines the need for optimizing the

<sup>27</sup> Among other things, there are noted some disadvantages of the permitting system, operating methods, classifications, inadequate for proper regulations and encouraging recycling and other shortcomings of the environmental legislation.

system of management of the sustainable "green" policy of low-carbon economy with respect to attracting investments, environmental problem solutions, reducing the negative impact of anthropogenic stress, the increasing the responsibility of natural resource users for the reducing emissions into the environment, as well as the integrated waste management.

The MEP, as we know, is currently engaged in efforts to simplify procedures for issuing environmental permits for emissions into the environment in accordance with the above policy documents. In addition, a working group under the MEP was established to consider proposals of the nature resource users for a variety of issues of the environmental legislation put forward at the Environmental Forum held in Astana on 30 May 2013.

The great importance is attached in the Republic of Kazakhstan to the RK global international initiative "Green Bridge"<sup>28</sup>, which may in its further development make a role of the "practical mechanism for the international transition to "green" economy by promoting the technological progress, improving the experience of environmental management and improving legal, economic and institutional conditions"<sup>29</sup>.

The main direction of the Green Bridge Partnership Program is the international cooperation to ensure "green" economic growth through technology transfer, knowledge sharing and provision of the financial support to the implementation of investment projects in the Central Asian region<sup>30</sup>. The program is supposed to transfer the latest "green technologies" by advanced countries to developing countries and the creation of free markets for "green products"<sup>31</sup>.

The international environmental initiatives of the RK are accompanied by the adoption of specific measures to implement them. In particular, Kazakhstan adopted the Concept of Transition of Kazakhstan to the "green economy"<sup>32</sup>, and, in February 2014, the draft law was prepared to amend 8 codes and 13 laws in order to bring the legislation into line with the Concept. Other measures in this direction are provided for by the Action Plan for Implementation of the Concept of Transition of Kazakhstan to the "Green Economy" for 2013-2020<sup>33</sup>, including, inter alia, the establishment of the Council for the transition to a "green economy" under the President of the Republic of Kazakhstan and the measures to improve the management waste.

<sup>28</sup> Website of the "Green Bridge" program - <http://gbpp.org/ru> (9 April 2014).

<sup>29</sup> Kazakhstan called "Rio +20" to implement the "Green Bridge" initiative. Source: <http://www.news.kaz.ru/economy/20120621/3374831.html> (27 September 2013).

<sup>30</sup> Concerning the International Conference on the Green Bridge Partnership Program and the international specialised exhibition "Astana EXPO-2017". Source: <http://www.eco.gov.kz/new2012/2013/09/3126-196/> (29 October 2013).

<sup>31</sup> Bragin A. The role and place of the "Green Bridge" in the movement towards sustainable development. Newspaper "Ecology of Kazakhstan", March 2011. Source: <http://greenkaz.kz/zelenyj-most/rol-i-mesto-zelenogo-mosta-v-dvizhenii-k-ustojchivomu-razvitiyu/> (29 October 2013).

<sup>32</sup> Concept of transition of Kazakhstan to the "green economy" approved by Presidential Decree dated 30 May 2013 No. 577.

<sup>33</sup> Action plan approved by Government of the Republic of Kazakhstan dated 30 July 2013 No. 750 is available on the website <http://greenkaz.org/> and [www.adilet.zan.kz](http://www.adilet.zan.kz) (9 April 2014).

The aim of the state is to introduce the low-carbon or "green" economy, which will reduce emissions of various pollutants, preventing and reducing environmental pollution. Mr. N. Kapparov, the Minister of Environmental Protection, stressed in his interview with 'Kazakhstan Today' that "for Kazakhstan the sustainable development and the "green economy" are not theoretical concepts, but vital issues"<sup>34</sup>.

## Conclusion

The analysis shows that the international obligations of Kazakhstan have a significant impact on the national environmental legislation of Kazakhstan, including the regulation of emissions of pollutants into the environment. We believe that this effect will be further developed.

In this connection, it appears expedient to hold further systematic research in this field in order to develop proposals for the improvement of Kazakhstan's environmental laws and accounting Kazakhstan's international obligations in the law enforcement, including judicial practice.

---

## Bibliography

1. "Green Bridge" in the economy of the future (selected publications of 'Kazhstanskaya pravda' newspaper). Source: <http://www.eco.gov.kz/new2012/2013/04/3122-97/> (11 November 2013).
2. VII AEF - Global Citizens' Summit. Reference material. : Partnership Program "Green Bridge", 7 September 2013. Source: <http://greenkaz.kz/globalnyj-grazhdanskij-sammit-civil-g-global-summit/vii-aef-globalnyj-grazhdanskij-sammit-spravochnyj-material-programma-partnerstva-zelenyj-most-7-sentyabrya-2013-g/> (11 November 2013).
3. F. K. Abdraimova. Issues of legal regulation of environmental protection against pollution by production and consumption wastes in Kazakhstan. Author's abstract on scientific degree of Candidate of Sciences. Astana: Eurasian National University named after L. N. Gumilev. 2010. 24 p.
4. M. Zh. Abraimova. Problems of legal environmental security of the Republic of Kazakhstan. Author's abstract on scientific degree of Candidate of Sciences. Almaty: Kazakh National University named after Al -Farabi. 2008. 27 p.
5. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (Basel, 22 March 1989).

<sup>34</sup> Kapparov N. Save nature on a cost basis. "Rio +20": projects of the Green Bridge Partnership Program – a practical contribution to the "green" economy. 3 April 2012. Source: <http://www.kazpravda.kz/print/1333417100> (18 October 2012).



6. Z. H. Baymoldina. Protection of the environment and ecological safety – at the level of international standards. Materials of the fourth Atyrau Legal Conference. Atyrau: 2006. Pp. 22-28.
7. I. Barinova. The international legal regime of civil liability for bunker oil pollution. *Economy and Law*, 2012, No. 6. Pp.4-48 (Appendix).
8. E. R. Basyrova, M. N. Kopylov. The role of arrangements on exchange of external debt for environmental projects to ensure implementation of the principle of the permanent sovereignty of states over their natural resources. *Environmental Law*, 2011, No. 5. Pp.33 -38.
9. S. D. Bekisheva. Legal problems of environmental security of Kazakhstan. Author's abstract for the degree of Doctor of Law. Almaty: Kazakh National University named after Al -Farabi. 2010. 44 p.
10. V. O. Borissov. On application of environmental legislation. *Oil Gas Right of Kazakhstan*, 2008, No. 4. Pp. 38-51.
11. A. Bragin. The role and place of the "Green Bridge " in the movement towards sustainable development. Newspaper 'Ecology of Kazakhstan', March 2011. Source: <http://greenkaz.kz/zelenyj-most/rol-i-mesto-zelenogo-mosta-v-dvizhenii-k-ustojchivomu-razvitiyu/> (29 October 2013).
12. A. G. Bragin. "Green Bridge as one of the basic mechanisms of the world's anti-crisis plan", 10 September 2013. AEF VII - Global Citizens Summit. Source: [http://greenkaz.kz/globalnyj-grazhdanskij-sammit-bragin-a-g-zelenyj-most-kak-odin-iz-osnovnyx-mexanizmov-mirovogo-antikrizisnogo-plana-10sentyabrya-2013-g/](http://greenkaz.kz/globalnyj-grazhdanskij-sammit-civil-g-global-summit/vii-aef-globalnyj-grazhdanskij-sammit-bragin-a-g-zelenyj-most-kak-odin-iz-osnovnyx-mexanizmov-mirovogo-antikrizisnogo-plana-10sentyabrya-2013-g/) (11 November 2013).
13. Vienna Convention for the Protection of the Ozone Layer (Vienna, 22 March 1985).
14. E. E. Vylegzhanina. International legal approaches to environmental protection in the subsurface use. *Oil Gas Law*, 2007, No. 4. Pp. 41-48.
15. Mining Charter of the member states of the Commonwealth of Independent States (Moscow, 27 March 1997).
16. Declaration on Environment and Development (Rio de Janeiro, 14 June 1992).
17. A. G. Dernovoy. Major international environmental initiatives of Kazakhstan. Source: [http://aarhus.kz/index.php?option=com\\_content&task=view&id=418](http://aarhus.kz/index.php?option=com_content&task=view&id=418) 2012 (18 October 2013).
18. Energy Charter Treaty (Lisbon, 17 December 1994).
19. Zh. S. Yelyubayev. On application of the provisions of international treaties and national legislation relating to environmental issues. *Subsoil and Law* 2007/2008, No. 1. Pp. 35-44.
20. Zh. S. Yelyubayev. Problems of legal regulation of subsurface use: domestic and foreign practice experience. Monograph. Almaty: Printing House "Koleso". 2010. 452 p.
21. E. Esimkhanov. Implementation of the Kyoto Protocol mechanisms in Kazakhstan. *Lawyer*, 2010, No. 8. Pp.50 -54.
22. Law of the Republic of Kazakhstan dated 30 May 2005 No. 54 -III "On International Treaties of the Republic of Kazakhstan", as amended.
23. I. A. Ignatiev. Codification of environmental legislation contemporary problems and conditions of use. *Environmental Law*, 2008, No. 1. Pp.16 -18.
24. Kapparov N. Save nature on a cost basis. "Rio +20": project partnership programs "Green Bridge". *Kazakhstan Today*. 3 April 2012. Source: <http://www.kazpravda.kz/print/1333417100> (18 October 2012).
25. V. M. Kim. Certain questions of administrative and civil liability for violations of the subsurface use legislation related to the environment and ecology. Materials of the fourth Atyrau Legal Conference. Atyrau: 2006. Pp. 65-76.
26. V. M. Kim. Liability for environmental violations in the implementation of operations on subsurface use in Kazakhstan. *Oil Gas Right of Kazakhstan*, 2006, No. 1. Pp. 24-31.
27. Kyoto Protocol to the United Nations Framework Convention on Climate Change (Kyoto, 11 December 1997).
28. Code of the Republic of Kazakhstan dated January 9, 2007 No. 212 -III "Environmental Code of the Republic of Kazakhstan", as amended.
29. Kodolova A. On compensation (liquidation) of harm to the environment, including those associated with past economic activity. *Economy and Law*, 2012, No. 8. Pp. 26-40.
30. Convention on Biological Diversity (Rio de Janeiro, 5 June 1992).
31. Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus, 25 June 1998).

32. Convention on the Transboundary Effects of Industrial Accidents (Helsinki, 17 March 1992).
33. Convention on Long-range Transboundary Air Pollution (Geneva, 13 November 1979).
34. Convention on Environmental Impact Assessment in a Transboundary Context (Espoo, Finland, on 25 February 1991).
35. Convention on the Protection and Use of Transboundary Watercourses and International Lakes (Helsinki, 17 March 1992).
36. Constitution of the Republic of Kazakhstan adopted at the national referendum on 30 August 1995, as amended.
37. G. K. Korbassarova. Legal regulation of transboundary environmental pollution in the Republic of Kazakhstan. Almaty: Kazakh National University named after Al-Farabi. 2008. 28 p.
38. S. Kultelev. Environmental Law of the Republic of Kazakhstan. Special part: Textbook. Almaty: HAS. 2007. 368 p.
39. N. G. Laptev. Regional Environmental Centre for Central Asia as a legal form of international environmental cooperation of the Republic of Kazakhstan. Author's abstract for scientific degree of Candidate of Sciences. Almaty: Kazakh National University named after Al-Farabi. 2008. 27 p.
40. K. V. Mukasheva. Draft Ecological Code: analysis of the rules governing environmental relations when using subsurface. Materials of the fourth Atyrau Legal Conference. Atyrau: 2006. Pp. 83-88.
41. Judicial review for civil cases on environmental protection, including the use of international law. Bulletin of the Supreme Court of the Republic of Kazakhstan, 2009, No. 6. Pp.4 -11.
42. A. Panov. Polluter does not pay. Economy and Law, 2012, No. 3. Pp.121 -128.
43. M. Pevzner. Mining Law: Textbook for high schools. 2nd ed., Rev. and add. M.: MGTU. 2001. V.1. 375 p.
44. Rules for handling persistent organic pollutants and wastes containing them, approved by Order No. 40-p of the Minister of Environmental Protection dated 24 February 2012 .
45. Energy Charter Protocol on Energy Efficiency and Related Environmental Aspects (Lisbon, 17 December 1994).

46. Framework Convention for the Protection of the Marine Environment of the Caspian Sea (Tehran, 4 November 2003).
47. UN General Assembly Resolution dated 27 July 2012.
48. S. L. Sitnikov, M. Gutbrod. Kyoto Protocol: "The green investment scheme". Oil Gas and Law Kazakhstan, 2009, No. 5. Pp.44 -48.
49. Agreement on Cooperation in the field of ecology and environmental protection (Moscow, 8 February 1992, as amended on 7 October 2002).
50. Stockholm Convention on Persistent Organic Pollutants (Stockholm, 22 May 2001).
51. Strategic Plan of the Ministry of Environment of the Republic of Kazakhstan for 2011–2015, approved by Government Resolution No. 98 dated 8 February 2011, as amended.
52. Strategic Development Plan of the Republic of Kazakhstan till 2020, approved by Presidential Decree No. 922 dated 1 February 2010, as amended.
53. M. K. Suleimenov. Regulatory decisions of the Supreme Court in the system of sources of law. Oil Gas Right of Kazakhstan, 2009, No. 4. Pp. 3-9.
54. Zh. R. Toregozhina, A. B. Akberliev. Analysis of the current environmental situation in the Caspian region. Oil and Gas, 2012, No. 5. Pp. 109-113.
55. S. Sh. Tyuleubekova. Legal enforcement of obligations of the Republic of Kazakhstan on environmental conventions. Author's abstract for scientific degree of Candidate of Sciences. Almaty. 2003. 33 p.
56. R. Hurst. Kashagan: high standards of occupational health and the environment. Oil & Gas of Kazakhstan, 2012, No. 4. Pp. 20-25.
57. L. A. Shabanova, G. A. Yeskendirova. Green Bridge Partnership Program as a tool for the transition to a "green" economy. Source: <http://ecokadastr.kz/Publications.aspx> (11 November 2013).
58. D. F. Sharafutdinov. Legal regulation of civil society participation in the preparation and dissemination of environmental information. Author's abstract for scientific degree of Candidate of Sciences. Almaty: Kazakh National University named after Al-Farabi. 2007. 28 p.
59. Yu. S. Shemshuchenko. Plus greening the entire Earth (problems of codification of international environmental law). Environmental Law, 2009, Nos. 2-3. Pp. 82-84.
60. Other legal acts, international treaties and publications.