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R E P O R T

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Ladies and Gentlemen!

In November 2016, the Supreme Court of the Republic of Kazakhstan adopted a new normative regulatory decree № 8 «Some questions of application by courts the ecological legislation of the Republic of Kazakhstan on civil cases».

The Supreme Court, by studying and summarizing the judicial practice, adopts such regulations, which give an explanation of the judicial practice, makes proposals to improve the legislation. In these decisions laws are clarified, concretized and detailed. At the same time the unity of judicial practice is not the adoption of the same decisions on the same dispute, but the unity of the understanding and application of the law in making decisions, the sample interpretation of the law.

For the first time in the history of Kazakhstan, with the exception of a special resolution on the implementation of international treaties and the arbitral awards in the branch normative regulatory decree, a resolution on the implementation of international normative legal act - the Aarhus Convention, the courts and public access to justice are obliged to apply the Aarhus Convention, is introduced.

The new regulatory decree gives qualification to environmental torts, which were not disclosed in the Environmental Code. Due to the lack of definitions of what is meant by «the destruction and damage of natural resources», «illegal and irrational use of them», for a long time it was obvious that without legislative disclosure of these concepts, it was difficult to bring those responsible to justice.

There are new clarifications on order for the procedure for obtaining an environmental permit for emissions into the environment and permits for the use of natural resources, rules for the treatment of production and consumption waste.

For instance, referring to article 283 of the Environmental Code on freedom of contract for the collection, utilization, recycling, storage, placement, transport or removal of waste, some nature managers were making deals with the companies, that performed services above, without checking their compliance with the qualification requirements. That means they ignored the article 288 of the Environmental Code, which provides responsibility for waste owners for the safe handling. In turn, those shady companies used to dump waste, including hazardous waste; polluting the environment and creating an ecological threat to life and health of people, flora and fauna.

Now, in accordance with point 22 of the new ruling, those who had transferred waste production and consumption to third parties, that do not meet the qualification requirements and do not have the rights to perform the operations of

services listed above, are responsible on a par with violators of environmental legislation. I note that the courts have focused on the reduction of nature managers' responsibility, applying modern methods of processing and recycling of waste, as referred in Article 297 of the Environmental Code.

The points, from 15 to 20 of normative ruling are devoted to the permit of issues in the public access to environmental information and justice.

Point 15 states, that in disputes, relating to the protection of the environment, including on issues on the limitation, suspension or termination of activities of physical or legal entities that have a negative impact on the environment, human life and health, can act not only the authorized state authorities, but also the public associations. The latter can act to protect the rights, freedoms and legitimate interests of the specific subjects and unspecified persons (actio popularis). The plaintiffs (applicants) on claims on the protection of the environment and use of natural resources are exempt from the state duty when filing a claim in court.

Also, physical and legal entities shall have the right to challenge in court the decision of state ecological expertise and its cancellation is carried out exclusively in the courts.

Without a positive conclusion of the state ecological expertise, any activity related to the impact on the environment, is a violation of environmental legislation.

The courts are clarified that for any activities that may have an impact on the environment, life and health, as well as in the production of the state ecological examination set mandatory environmental impact assessment. It is carried out by physical and legal entities, licensed to perform activities and services in the field of environmental protection services.

Publication of ads in the media about the public hearings with the time and place of their conduct must be carried out in the State and Russian languages for 20 days prior to the public hearings.

Public associations for the protection of the environment shall be entitled to receive complete and reliable environmental information from the state bodies and organizations. Providing environmental information in accordance with the Law «On the order of consideration of physical and legal entities», standards and regulations of the state service «Provision of environmental information», subject to the provisions of Article 9 of the Aarhus Convention, applicable to the access of the public disputes to a court about:

- 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 (in the evaluation procedure of the environmental impact and state environmental expertise);
- appeals against decisions, actions (inaction) of the state and non-state bodies, organizations and individuals related to the violation of environmental legislation.

According to the Law «On State Secrets» (17) and «On Access to Information» (6) information on the state of the environment cannot be classified as secrets.

Public authorities, at the request for environmental information to the public, should provide it with the requirements of Chapter 21 of the Environmental Code, the Law «On Access to Information» and Article 4 of the Aarhus Convention. Environmental information can also be obtained from the State Fund for Environmental Information.

Articles of the Civil Code (126, 1017 - on the official and commercial secret, undisclosed information), the applicant may be denied access to information of installation of power, raw material base, the number of work shifts, the financing of environmental measures, etc. Denying can also be motivated by a secret pre-trial investigation, guarantees of physical and legal entities of confidentiality of the primary statistical information, or if it involves, a violation of privacy.

For example: The Department of Ecology in the city of Almaty, reported to the Ecological Society «Green Salvation» that violations of the law when granting an environmental permit organizations «Urker DB» is not allowed. Ecological Society filed a lawsuit against the Department of Environment on the recognition of unreliable information and forcing the answer to provide full information.

The Economic Court of Almaty city and the appellate court refused to accept the complaint, stating that the Society must first appeal the issuance of the environmental permit. In January this year, the Supreme Court, applying Article 9, paragraph 1 of the Aarhus Convention that *each party within the framework of its national legislation, ensure that any person who considers that his request for access to information filed in accordance with Article 4 of the Convention, is not considered, wrongfully refused, whether in part or in full, inadequately answered, the approach does not meet the provisions of that article, has access to a review procedure before a court or another independent and impartial body constituted in accordance with the law; canceled such definitions and returned the petition for a new trial.*

Thank you for your attention!