

NORMATIVE RULING OF THE SUPREME COURT OF THE REPUBLIC OF KAZAKHSTAN

"On issues of application of the ecological legislation of the
Republic of Kazakhstan on civil cases by the courts"

Here are some paragraphs from the normative ruling.

#14

In causing a joint harm to the environment by several persons, in accordance with Article 932 of the Civil Code, joint responsibility is assigned on them. According to the claimant, the culprits can have a partial responsibility. If only, such procedure is in conformity with the interests of environmental protection, provides efficient and full compensation for the damage caused.

Court, laying partial responsibility on those guilty, should be based on the degree of guilt of each of them. If it is impossible to determine the degree of guilt of each tortfeasor, liability is set on the basis of equality.

The court may, in accordance with paragraph 5 of Article 935 of the Civil Code, take into account the financial situation of the causer and reduce the size of compensation for damages, except in cases where the damage was inflicted by legal entity or individual entrepreneur without a legal entity or intentional actions of an individual.

#15

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 Environmental Code).

#16

Physical and legal entities shall have the right in court to challenge the conclusion of the State Environmental expertise (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 (point 7 of article 51, the EC).

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

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»).

#17

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, 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.

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

#18

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.

#19

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.

#20

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).

Also,

Under the concepts of *destruction and damage to natural resources* and the *illegal and unsustainable use of natural resources*, the courts should be understood:

destruction and damage of natural resources - the basis of the degree of danger of socially dangerous consequences, it is a total loss of their specific business, product, landscape and recreational and ecosystem (water regulating, soil protection, climate-forming and other) values, restoration of which it is impossible or requires land reclamation, tree-planting, bottom cleaning and other works or partial loss of their specific values, allowing its recovery by performing work on the planning and grassing of soil from surface contamination or self-recovery of a natural resource;

illegal and unsustainable use of natural resources - actions taken without the permission of a special nature, obtained in accordance with the procedure established by Article 12 EC, without the agreement (contract), the act of the right to use or ownership of land (the contract territory), harvesting permits or orders on the side forest management; any authorized special nature, which led to a decrease in the specific value of natural resources as a result of mismanagement and low technological level.