

**2022 Judicial Colloquium “Adjudication of cases related to climate change and air quality”**

**Justice Sholpan Daniyarova, Supreme Court of Kazakhstan**

**I welcome all the participants of the colloquium  
and wish you a beneficial work!**

Technological progress entails a deterioration of the environmental situation. Kazakhstan, with its large territory and enormous natural resources, is not an exception.

The right of citizens to a healthful environment is written down in the Constitution of the Republic of Kazakhstan.

This constitutional provision has found its further development in the new Environmental Code.

Among the measures taken by Kazakhstan to create a stable rule of law was the adoption of the Administrative Procedural Code (hereinafter referred to as the APC), which entered into force on July 1, 2021. So, in Kazakhstan the Administrative courts (administrative justice) have started their work.

The establishment of administrative courts is important in ensuring the rights of citizens, their legitimate interests and freedoms from the abuse of authority of officials that are happening in some cases, and on the other hand, contributes to the stability, legality and validity of decisions and actions of state and other bodies and their officials.

One of the most important principles of the administration courts is the principle of priority of law, which means that all doubts, contradictions and ambiguities of the legislation of the Republic of Kazakhstan on administrative procedures are interpreted in favor of the participant of the administrative procedure.

The APC establishes the principles and rules for the implementation of administrative procedures and legal proceedings in the field of public legal relations.

The main principle of administrative legal proceedings in Kazakhstan, when considering public law disputes, is the principle of the active role of the court. Rights of the court are not limited to the evidence presented by the parties, but to investigate all the circumstances of the case is the vital obligation for the fair resolution. Moreover, the court has the right to express its preliminary legal opinion on the legal grounds relating to the factual and legal sides of the administrative case. The active role of the court is also taking measures to reconcile the parties. If earlier reconciliation with the authorities was prohibited at the legislative level, then with the introduction of administrative justice in Kazakhstan, this kind of reconciliation is allowed now.

It should be noted that the principle of presumption of guilt of state bodies, which are obliged to prove the legality of their actions and the legality of the decisions taken, that is, the burden of proof in the case rests on the defendant in the administrative process.

The principle of binding judicial acts is ensured by the introduction of judicial control by imposing a monetary penalty, including for non-execution of a court decision. At the same time, monetary penalties can be imposed repeatedly, thereby the APC establishes direct judicial control over the execution of court decisions.

Since the beginning of the administration's work, the courts have received more than 50 cases in the field of environmental protection: on the recognition of public hearings as illegal; on the invalidation of the instructions of the authorized body in the field of environmental control on the elimination of violations of environmental legislation; on the recognition of illegal refusal to provide information, etc.

Thus, the Administrative Court of Ust-Kamenogorsk (city in Kazakhstan) considered a case on Bozhkov's claim to appeal the inaction of state bodies that evaded consideration of his appeal to establish the boundaries of radioactive spots and the exact level of the radioactive background in Ust-Kamenogorsk.

Bozhkov's claim was not considered for a long time and was redirected to various state bodies.

The Environmental Code provides that the identification, assessment, and elimination of objects of historical pollution are organized by local executive bodies of districts and cities.

The claim was denied by the court of first instance, but the court of appeal changed the decision and ordered the Mayor's Office of Ust-Kamenogorsk to register and ensure consideration by the local executive body of Bozhkov's claim within the time limit established by law.

The Department of Ecology in the city of Nur-Sultan, at the request of claimant Uakhidova on the fact of air pollution (strong odor), from September 9 to 15, 2021, the inspection of certain company on fact of emissions was carried out.

The company was a manufacturer of silicate bricks and other products made of concrete, construction gypsum and cement. During the analytical investigation of sources of atmospheric pollution (test report dated September 10, 2021) air samples were taken from the boiler room chimney to determine the concentration of harmful substances in the boiler, in which an excess of emission standards into the environment was detected, instrumental measurements were carried out in the working area of the subject being checked. In the working area, the excess of inorganic dust was 0.300 g/s, the actual concentration was 0.365 and 0.502 g/s.

On September 15, 2021, according to the results of the audit, the company was brought to administrative responsibility for violating environmental legislation, and an order was made to eliminate the violations committed by October 27, 2021.

Having paid an administrative fine in the amount of 476,889 tenge (900 euros), but not agreeing with the order of the state body, that company appealed to the administrative court with a claim to challenge it.

Based on the results of the consideration of the case, the court concluded that the contested order was made by the state body lawfully in compliance with the competence on the basis of the established fact that the nature user exceeded the

established maximum permissible emissions of pollutants in an unacceptable concentration into the environment. The court refused to satisfy the claim.

Currently, the capital city's administrative court is pursuing a case of one NGO in the interests of residents of the city of Nur-Sultan to the city mayor to challenge actions to grant rights to possess the land on which the group of lakes is located, assigning the obligation to establish water protection zones on these sites. The lake group belongs to class III – type 15 (according to the classification of Kvasov D.V.). The age of the lakes is about 13 000 years. Lakes were formed in the depressions of the landscape between the two rivers Nura and Yesil. During periods of high water, floods occurred on the Nura River, and the water flowed due to natural depressions strictly to the north into the Yesil River. In places, the depth of depressions reaches up to 3.5 meters and this allowed the water to be preserved and function as separate lakes with a positive water balance.

Since administrative justice is at the initial stage of its development, it is too early to talk about the stability of judicial practice in this category of cases, but in their activities administrative courts will certainly follow the ecological concept of Kazakhstan, ensuring access to justice and the rule of law, including in environmental matters.