



The Supreme Court of the Republic of Kazakhstan

**Determination of the subject of consideration and verification of
the material and procedural
aspects of the case for fact-finding in environmental cases**

**Judge Beibut
Shermukhametov**

April 2022, Geneva



The following principles have been introduced in the Environmental Code:

- **«the polluter pays»**
- **environmental damage is subject to full or is replaced by remediation, mandatory measures to prevent environmental pollution and damage to the environment**
- **mandatory compensation for environmental damage**
- **cooperation, coordination and openness of state bodies**



Information system on quantitative and qualitative indicators of natural resources

- 1. forest cadastre**
- 2. cadastre of specially protected natural areas**
- 3. cadastre of wildlife**
- 4. land cadastre**
- 5. subsoil cadastre**
- 6. water cadastre**



State environmental inspectors according to the results of state environmental control:

- Can initiate administrative proceedings with the determination of the amount of environmental damage caused.**
- Send claims to the court on suspension, restriction or termination of activities of legal entities and individuals, on deprivation of environmental permits, revocation of the conclusion of the state environmental expertise.**
- Conduct a mandatory environmental audit.**



Responsibility for committing an environmental offense

The very same environmental and legal responsibility must be considered in three interrelated aspects:

- **as a state coercion to fulfill the requirements prescribed by law;**
- **as a legal relationship between the state (*represented by its bodies*) and offenders (*who are subject to sanctions*);**
- **as a legal institution, set of legal norms of various branches of law (land, mining, water, forestry, environmental protection, etc.).**



Compensation is subject to damage caused as a result of:

- 1. Destruction and damage to natural resources, disposal of production and consumption wastes**
- 2. Illegal and irrational use of natural resources**
- 3. Unauthorized emissions**
- 4. Excess emissions into the environment**



Most of the criminal cases in the field of environmental protection are poaching and illegal fishing. There are almost no cases related to *environmental damage*. It is difficult to investigate such cases, therefore, for the most part, law enforcement agencies are limited to initiating cases in civil proceedings.

In 2018, 4 people caught many fish that are under the ban on fishing. In 2019, the criminal liability for this crime was increased. Now this is a crime of medium gravity with a statute of limitations of 5 years. But at the time of the commission, it was a crime of minor gravity. The statute of limitations for such an act was set at 2 years. Local courts missed this circumstance and convicted them in 2021. The Supreme Court applied the statute of limitations and dismissed the case against the poachers.



Shortcomings and gaps

1. Issue of personal responsibility is not regulated for environmental criminal offenses that are committed based on collective decisions.
2. Issue of criminal liability of legal entities has not yet been resolved.
3. Issues of liability for illegal movement (transportation) of fish, aquatic animals, carcasses, skins, horns, other parts of the body of wild animals or their cutting have not been developed.
4. There are no responsibility for the commissioning of environmentally hazardous facilities or hiding data on environmental pollution.



Types of civil litigation

- **On the recovery of property damage caused to the environment on the claims of authorized bodies.**
- **On the recovery of property damage caused to the environment on the claims of authorized bodies**
- **On non-compliance with the established procedure for ensuring public participation in decision-making on the environmental aspects of business projects.**
- **On judicial protection of the rights and interests of citizens by public environmental associations on issues related to the environment.**



Thank you for your attention.