

About some issues of application by courts of the environmental legislation of the Republic of Kazakhstan in civil cases

Unofficial translation

Normative decision of the Supreme Court of the Republic of Kazakhstan dated November 25, 2016 № 8.

Unofficial translation

Footnote. Throughout the text, the words "individual entrepreneurs without forming a legal entity," "individual entrepreneur without forming a legal entity," are excluded in accordance with the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

In order to ensure a uniform application by the courts of the environmental legislation of the Republic of Kazakhstan in civil cases, the plenary session of the Supreme Court of the Republic of Kazakhstan

resolves:

1. Environmental legislation is based on the Constitution of the Republic of Kazakhstan and consists of the Environmental Code of the Republic of Kazakhstan (hereinafter referred to as the EC), the codes of the Republic of Kazakhstan On Public Health and Healthcare System, On Subsoil and Subsoil Use, Land, Forest and Water, laws of the Republic of Kazakhstan dated 23 April 1998 No. 219-I On Radiation Security of the Population (hereinafter referred to as the Law on Radiation Security), dated July 16, 2001 No. 242-II On Architectural, Urban Planning and Construction Activity, dated July 9, 2004 No. 593-II On Protection, Reproduction and Use of Wildlife (hereinafter - the Law on the Protection of Wildlife), dated July 7, 2006 No. 175-III On Specially Protected Natural Areas (hereinafter - the Law on Specially Protected Areas) and other regulatory legal acts.

Footnote. Paragraph 1 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

2. The rules for applying the EC in the event of conflict of its provisions with international treaties and other laws of the Republic of Kazakhstan regulating relations in the sphere of environmental protection are provided for in paragraphs 2 and 3 of Article 2 of the EC. The Environmental legislation governs relations in the protection, reproduction, use, safety of natural objects and protection of human life and health. The concept of environmental protection is contained in subparagraph 46) of Article 1 of the EC.

Issues of protection and use of subsoil, water, forests and other natural resources of specially protected natural areas not used in economic activities, of animals and plants listed in the Rules of maintaining the Red List of the Republic of Kazakhstan, approved by Order No. 734 of the Government of the Republic of Kazakhstan dated June 2, 2012, in the part not regulated by the EC, are regulated by laws on protection of the animal world, on specially protected areas, on subsoil, other special laws, regulatory legal acts.

3. Natural resources in the Republic of Kazakhstan may be in general or special nature management (Article 10 of the EC). The object of nature management right is understood as individually defined parts of natural resources (land, water body, forest fund land, and so on) that are physically detached (by establishing its borders on the ground, “natural borders”).

In general nature management, the population shall have the right to constant and free use of environmental objects to meet vital necessities, without providing of the natural resources for separate use, excepting restrictions provided for by the environmental legislation.

The definition of special nature management is contained in paragraph 4 of Article 10 of the EC. Environment emissions in the process of economic and other types of activities shall be carried out by nature users on special permits and on a paid basis, in the manner established by the EC and other legislative acts. Payment for emissions into the environment, and also mandatory payments for the use of certain types of natural resources is established by the tax legislation of the Republic of Kazakhstan (paragraph 1 of article 101, article 102 of the EC).

4. The definitions of nature users and their types are contained in subparagraph 71) of article 1 and article 11 of the EC, of emissions into the environment -in subparagraph 43) of article 1 of the EC.

Emissions into the environment shall be allowed within the established limits, i.e. the normative volumes of emissions into the environment, established for a certain period and depending on the category of the facility, by the authorized body in the environmental protection or by local executive bodies of oblasts, cities of republican status, the capital.

Nature users carrying out economic and other activity in which emissions into the environment are allowed, excepting cases provided for in paragraph 1 of Article 69 of the EC, shall be required to obtain a license and (or) an environmental permit for special nature use, for specific types of emissions or an integrated environmental permit issued by the authorized state body in the field of environmental protection or by local executive bodies of oblasts, cities of republican status and the capital on the basis of submitted application (paragraph 3 of article 12, article 20, 68, 69 and 79 of EC). Pursuit of economic and other activities without an environmental permit (integrated environmental permit) for emissions into the environment or failure to timely obtain such a permit shall entail liability provided for by the environmental legislation and shall be the ground for suspension of economic or other activities or suspension of operation of an object, which is a source of environmental pollution.

5. A permit is a set of documents certifying the nature user's right for emissions into the environment, containing information about the nature user and the economic and other activities carried out by him, validity period of the permit, nature management conditions and environmental protection plan for the permit duration period (Subparagraph 98) of Article 1, Article 70 of the EC).

An integrated environmental permit is a single document certifying the right of a nature user to carry out emissions into the environment, subject to introduction of the best available technologies and compliance with the technical specific emission standards established by the environmental legislation.

Permits (integrated permits) for emissions into the environment shall be issued for a specified period or indefinitely, depending on the categories of production facilities and types of activities and until the change of applied technologies and nature management conditions, indicated in the effective permit (Articles 76, 79 EC).

According to paragraph 1 of Article 78 of the EC, a permit for emissions into the environment shall be reissued within fifteen calendar days in the event of a change in the name, reorganization of a nature user, also replacement of the facility (facilities) owner for which such a permit for emissions was issued, provided that the reissue does not entail an increase in the environmental burden.

Failure by the nature user to renew the permit for emissions should be considered as carrying out unlawful emissions into the environment.

A nature user may be deprived of the permit for emissions into the environment only in a judicial proceeding.

Footnote. Paragraph 5 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

6. In accordance with paragraphs 1 and 2 of Article 12 of the EC, the use (withdrawal) of natural resources and implementation of certain types of activities in the environmental protection, without emission into the environment, do not require environmental permits and are carried out on the basis of licenses or permits, resolutions of the Government or local executive bodies on the provision of natural resources in the manner prescribed by laws, or agreements (contracts) on the use of natural resources, concluded in the manner prescribed by legislative acts, in the frames of special nature use right.

7. The concept of environmental pollution is contained in subparagraph 48) of Article 1 of the EC.

Types of environmental pollution are: chemical, mechanical (clogging), biological and radioactive (infection), physical (radiation, acoustic or electromagnetic radiation, vibration and other harmful physical effects).

When applying the environmental legislation, it shall be borne in mind that legally significant is the pollution which exceeds acceptable environmental quality standards or

which, although not exceeding them, subsequently caused significant harm to the environment. The concepts of pollution of individual environmental objects are contained in the legislation.

Environmental quality standards shall be understood as indicators characterizing the environment and natural resources favorable for human life and health.

The main factors of environmental pollution include:

economic and other activities carried out in violation of the established norms and rules of environmental protection;

accidents, catastrophes and natural disasters;

waste disposal in the country.

Sources of pollution are objects from which harmful substances are emitted into the environment.

When considering this category of occurrences, it shall be ascertained to what type of sources of the pollutant emissions (mobile or stationary) the equipment belongs (apparatus, installation, unit), proceeding from its purpose, technological characteristics and work performed, physical dimensions and other indicators. In this way, by analogy with subparagraph 65-3) of Article 1 of the EC, a drilling rig, at least structurally mounted on a vehicle that moves this installation, does not apply to mobile sources, since the installation's operation process itself (drilling) is carried out when the vehicle is stopped, i.e. is in a stationary position.

8. Environmental offense shall be understood as an action (inaction) that violates the environmental legislation and causes harm to the environment, human health and life, welfare of individuals and (or) legal entities, individual entrepreneurs with no corporate status, to the state or creates a real threat of such infliction.

The environmental offense objects are public relations in interaction between the society and the nature, management relations in the nature management, ownership right relations and other rights to natural resources, as objects of environmental protection from destruction, degradation, damage, pollution and other harmful effects, the environment and its individual components in a natural interconnection, regarding which the activities of these legal relations entities arise and are carried out, as well as human life and health, property of individuals and legal entities, and the interests of the state.

Footnote. Paragraph 8 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

9. Any individuals and legal entities: state and non-state, residents and non-residents can be recognized as pollution subjects (harm-doers).

Individuals and legal entities that caused harm to the environment, life and health of citizens, property of individuals and legal entities, or the state by breaking the environmental legislation, shall be obliged to compensate for the harm caused, except for cases of harm that

was not caused through their fault in accordance with paragraph 2 of Article 917 of the Civil Code of the Republic of Kazakhstan (hereinafter referred to as the Civil Code).

Footnote. Paragraph 9 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

10. Breach of the environmental legislation shall entail property (civil), administrative, criminal liability.

According to paragraph 2 of Article 321 of the EC, damage caused to the environment, the health of citizens, property of individuals and legal entities, the state in consequence of:

- destruction and damage to natural resources;
- illegal and irrational use of natural resources;
- unauthorized emissions;
- excess emissions into the environment.

Under subparagraph 42) of Article 1 of the EC, environmental damage shall be understood as pollution of the environment or withdrawal of natural resources in excess of established standards, which has caused or is causing degradation and depletion of natural resources or the death of living organisms.

Cases of excess waste disposal, excess discharge of pollutants into facilities equipped and intended for waste disposal and wastewater discharge, as well as cases of chemical substances or wastewater spills on production sites fenced by protective structures preventing pollution of the earth surface, subsoil and groundwater shall not be considered as environmental damage. Unauthorized and excess emissions do not include cases of deviation from associated gas processing development programs, also project documentation and draft standards for emissions into the environment, including changes in gas flaring scenarios and (or) schedules submitted by a natural resource user for state environmental expertise (hereinafter - SEE) and not entailing exceeding of the standards for maximum allowable emissions (paragraphs 7, 8 and 9 of Article 321 of the EC).

By virtue of the requirements of paragraph 1 of Article 7 of the Law of the Republic of Kazakhstan dated December 13, 2005 No. 93-III On Compulsory Environmental Insurance (hereinafter referred to as the Law on Environmental Insurance), individuals and (or) legal entities engaged in environmentally hazardous types of economic and other activities, shall not be entitled to pursue their activities without concluding an obligatory environmental insurance contract. In the existence of more than one owner of the facility carrying out an environmentally hazardous type of economic and other activity, the said contract shall be concluded with any of them, indicating in the insurance policy all the facility owners as insured.

Footnote. Paragraph 10 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

11. Under the notions of destruction and damage to natural resources and illegal and irrational use of natural resources, the courts shall understand:

destruction and damage to natural resources – proceeding from the extent of hazard of socially dangerous consequences, it is a complete loss by them of their specific economic, commodity, landscape-recreational and ecosystem (water-regulating, soil-protective, climate-forming and other) values, the restoration of which is impossible or requires the recovery of land, forest planting, dredging and other works, or a partial loss by them of their specific value, allowing its restoration by means of planning and grassing-down of soil from surface contamination or self-restoring of natural resources;

illegal and irrational use of natural resources - actions committed without permission for special natural resources use, obtained in the manner established by Article 12 of the EC, without an agreement (contract), an act on the land tenure right for a land plot (contract territory), a forest felling license or a permit for collateral forest use; or permitted special natural resources use, which led to a decrease in the specific value of natural resources in consequence of mismanagement and a low technological level.

Definitions of excess emissions and unauthorized emissions are contained, respectively, in subparagraphs 56-1) and 61-1) of Article 1 of the EC. Alongside this, the courts shall bear in mind that emissions into the environment, in terms of excess of the established limits for emissions, discharges and disposal of pollutants, detected during state control by instrumental, analytical or calculation methods and not recorded by departmental and production control, shall also be viewed as unauthorized emissions into the environment.

The concept of accidental environmental pollution is contained in subparagraph 49) of article 1 of the EC, subparagraph 2) of article 1 of the Law on Environmental Insurance.

12. A lawsuit on compensation for damage caused to the environment must be motivated, contain references to the provisions of substantive and procedural law, evidence of the damage caused and the causal link between the wrongful actions (inaction) of the guilty person and the damage caused.

In consideration of the legal suits, the courts shall investigate the circumstances corroborating the harmful consequences occurrence. In particular, it shall be ascertained whether there was environmental pollution or seizure of natural resources in excess of established standards, which caused the degradation and depletion of natural resources or the death of living organisms. Actions shall also be taken to establish other circumstances of the environmental offense.

Footnote. Paragraph 12 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

13. As a general rule, the guilt shall be the ground for imposing property liability for causing harm to the environment (paragraph 1 of Article 917 of the Civil Code).

In some cases, liability for damage to the environment is allowed, regardless of the presence of the fault of the damage causer. Thus, a subsoil user conducting exploration and (or) production of hydrocarbons at sea shall be held liable in the event of sea pollution, regardless of the presence of fault, unless it proves that the harm arose as a result of force majeure or absence of intent of the injured party (paragraph 8 of Article 154 of the Subsoil and subsoil use Code).

In accordance with paragraph 1 of Article 931 of the Civil Code, paragraph 5 of Article 321 of the EC, individuals and legal entities whose activities are associated with increased danger to the environment shall also compensate for the harm caused, regardless of their fault, unless they prove that the harm was caused by force majeure or absence of intent of the affected party.

If the insurant, whose liability is subject to compulsory environmental insurance has insured himself as the owner of a facility the operation of which is associated with the risk of causing harm to third parties, then the contract of compulsory environmental insurance shall be concluded in the part of civil liability insurance for causing harm to the environment (paragraph 2 of Article 8 of the Law on environmental insurance).

The court, guided by the provisions of the environmental legislation, including the order of the Minister of Energy of the Republic of Kazakhstan dated January 21, 2015 No.27 “On approval of the List of environmentally hazardous types of economic and other activities” shall decide whether the activity of an individual or legal entity poses an increased danger to the environment.

Footnote. Paragraph 13 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

14. In the event of causing joint damage to the environment by several persons in accordance with Article 932 of the Civil Code, they shall be held jointly and severally liable. On the plaintiff’s statement, it is possible to impose shared responsibility on the guilty persons, if such a recovery procedure is in the interests of environmental protection, and provides effective and full compensation for the damage caused.

The court, imposing shared liability on the guilty persons, shall proceed from the guilt extent of each of them. If it is impossible to determine the extent of each party’s guilt in the harm caused, the amount of liability shall be established on equal shares basis. In the event of an environmental offense committed by several persons, it shall be permissible to impose joint or several liability for the harm caused only on the episodes in which joint involvement of these persons was established.

The court shall have the right, in accordance with paragraph 5 of Article 935 of the CC, to take into account the property status of the harm causer and reduce the damage compensation amount, unless the damage was caused by a legal entity, an individual entrepreneur with no corporate status, or intentional actions of an individual.

15. The authorized body in the environment and specially authorized state bodies in the environmental protection, conservation, reproduction and use of natural resources, their territorial units, state bodies within their competence, individuals and legal entities, prosecutors within their powers may act as claimants in legal suits on compensation for damage to the environment, also on restriction, suspension and termination of economic and other activities of individuals or legal entities that have adverse impact on the environment, human life and health.

Individuals shall have the right to bring claims to the court on compensation for harm caused to their life and health, property due to violation of environmental legislation, demands on calling off decisions on the siting, construction, reconstruction and commissioning of enterprises, structures and other environmentally hazardous facilities, also on restriction and termination of economic and other activities of individuals or legal entities that have adverse impact on the environment, human life and health (Article 13 of the EC).

Public associations, by virtue of Article 14 of the EC, shall have the right to demand annulment of court decisions on the siting, construction, reconstruction and commissioning of enterprises, structures and other environmentally hazardous facilities, on the restriction, suspension and termination of economic and other activities of individuals or legal entities that have adverse impact on the environment, human life and health, file claims in court for compensation for harm caused to life, health and (or) property of individuals and legal entities, due to violation of the environmental legislation, also in defense of the rights, freedoms and legitimate interests of individuals and legal entities, including an indefinite range of persons, on environmental protection and use of natural resources.

Under subparagraph 28) of Article 616 of the Code of the Republic of Kazakhstan “On taxes and other obligatory payments to the budget (Tax Code)”, plaintiffs (applicants) in claims (applications) for the protection of the rights, freedoms and legitimate interests of individuals and legal entities, including in the interests of an indefinite range of persons, on issues of environmental protection and the use of natural resources, shall be exempted from paying state fees when filing a lawsuit with a court.

Footnote. Paragraph 15 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

16. Individuals and legal entities shall have the right to challenge the conclusion of the SEE in court (Article 57 of the EC). Positive conclusion of the SEE shall be withdrawn (revoked) by the body that issued it, on the written request or consent of the nature user. If a violation of the environmental legislation of the Republic of Kazakhstan is detected, the positive conclusion of the SEE shall be withdrawn (revoked) in court (paragraph 7 of Article 51 of the EC).

The list of objects subject to mandatory SEE is established by Article 47 of the EC. By virtue of Article 51 of the EC, carrying out activities without a positive conclusion by the SEE is a breach of the environmental law.

As required by paragraphs 9 and 13 of the Rules for conducting state environmental expertise, approved by order No. 100 of the Minister of Energy of the Republic of Kazakhstan dated February 16, 2015, materials provided for expertise in electronic form must contain, among other documents, the results of public opinion accounting. Conclusions of branch examinations carried out by other state bodies, also recommendations of external experts, shall be factored in.

Differences in the SEE performance shall be resolved through negotiations or in a judicial proceeding (Article 58 of the EC). In resolving such disputes, courts shall be guided by environmental legislation, provisions of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus, June 25, 1998, ratified by the Law of the Republic of Kazakhstan of October 23, 2000 No. 92 -II “On Ratification of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters”, hereinafter -Aarhus Convention).

Footnote. Paragraph 16 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

17. It shall be brought to notice of the courts that for any types of economic and other activities that may have a direct or indirect impact on the environment, life and health of the population, mandatory environmental impact assessment (hereinafter referred to as EIA) has been established, the stages and procedure for which are determined by Chapter 6 EC. In accordance with Articles 35 and 38 of the EC, within the framework of the EIA, the possible consequences of the planned economic and other activities for the environment and human health are assessed, measures are developed to prevent adverse consequences (destruction, degradation, damage and depletion of natural ecological systems and natural resources), to improve the environment, taking into account the environmental legislation requirements.

EIA shall be carried out by individuals and legal entities that obtained a license to perform work and provide services in the field of environmental protection. Organization and funding of the work on EIA shall be provided by the customer (initiator) of the planned activity.

According to the Rules on holding public hearings, approved by order No. 135-p of the Minister of Environmental Protection of the Republic of Kazakhstan of May 7, 2007, public hearings on EIA materials discussion shall be held in the form of an open meeting or a poll. The customer (initiator) of the planned management, business and other activities shall agree in advance with the local executive bodies the time and place of the public hearing and publish an announcement in the media about the public hearings indicating their time and place.

The announcement shall be published in the National and Russian languages 20 days before the date of the public hearings.

In accordance with Article 57-2 of the EC on projects whose implementation can directly impact the environment, life and health of the population, and in the production of SEE, public hearings are mandatory, the organization, procedure for conducting and recording the results of which are within the competence of local executive bodies (article 20 of EC).

Footnote. Paragraph 17 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

18. By virtue of Article 14 of the EC, public associations, in carrying out activities in the environmental protection, shall be entitled for receiving timely, complete and reliable ecological information from state bodies and organizations, in accordance with Articles 163, 164 and 165 of the EC. Ecological information shall be provided in accordance with the Law of the Republic of Kazakhstan dated January 12, 2007 N 221-III "On the procedure for considering applications from individuals and legal entities" and the Rules for the state service "Provision of environmental information", approved by order No. 130 of the Minister of Ecology, Geology and Natural Resources of the Republic Kazakhstan dated June 2, 2020.

According to Article 17 of the Law of the Republic of Kazakhstan dated March 15, 1999 N 349-I "On State Secrets", information on the state of environment shall not be subject to classification.

At the request of the public to provide ecological information, the state bodies shall provide it, taking into account the requirements of Chapter 21 of the 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 shall also have the right to receive relevant ecological information from the State Fund of Ecological Information in accordance with the Rules of maintaining the State fund of ecological information, approved by Order N 589 of the Government of the Republic of Kazakhstan dated October 13, 2016.

Footnote. Paragraph 18 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

19. When considering this category of cases, courts shall bear in mind that provisions of Article 9 of the Aarhus Convention are applicable to disputes on access of members of the public (individuals and (or) legal entities) regarding:

- violations of the right of the public to access ecological information;
- violations of the right to public participation in the decision-making process on the planned economic activity (within the framework of the EIA and SEE procedures);
- appeal of decisions, actions (inaction) of state and non-state bodies, organizations, individuals related to violation of the ecological legislation.

20. By virtue of Articles 126, 1017 of the Civil Code (on business and commercial secrets , undisclosed information), the applicant may be denied provision of information on the installation capacity, raw material base, number of work shifts, financing of environmental measures and other data. Refusal in receiving ecological information regarding the limited access information and data may also be based on the following legislative acts: Criminal Procedure Code of the Republic of Kazakhstan (secret of operational investigation, inquiries and preliminary investigations), laws of the Republic of Kazakhstan dated March 19, 2010 No. 257 -IV On State Statistics (guarantees to individuals and legal entities of the confidentiality of primary statistical information), dated November 24, 2015 No. 418-V On Informatization (violation of privacy).

21. Under Article 288 of the EC, individuals and legal entities whose activities are related to the production and consumption wastes generation are responsible as owners for the safe handling of wastes from the moment they are generated, unless otherwise provided by law or an agreement determining the conditions for handling wastes. They are obliged to comply with environmental and sanitary-epidemiological requirements and take measures for the storage, disposal, detoxification, placement or safe disposal of waste at storage sites. The terms for the safe storage of waste prior to their recovery or processing or burial are determined by paragraph 3 of Article 288 of the EC.

The concept of temporary waste storage is contained in subparagraph 30-1) of Article 1 of the EC. Courts should bear in mind that under paragraph 3-1 of Article 288 of the EC, temporary disposal of waste is not a waste disposal. Violation of the storage terms of such waste entails recognition of it as disposed of from the moment it was formed.

Environmental legislation binds waste owners to use the centralized waste collection system or the services of entities that meet qualification requirements, perform operations in collecting, utilization, processing, storage, disposal or removal of waste, or independently carry out waste disposal or removal operations. The transfer of waste by the owner to such entities means at the same time the transfer of ownership of the waste to them, unless the parties concluded an agreement on other terms.

Footnote. Paragraph 21 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

22. Individuals and legal entities that carry out operations in collection, recycling, processing, storage, placement or disposal of waste and transporting the waste received from third parties shall be responsible for their safe handling from the moment they are transferred by the owner of the waste – loading of the waste onto the vehicle owned by them and acceptance by an individual or legal entity, and until the waste is unloaded at the designated place from the vehicle, unless otherwise provided by law or agreement.

In the events of the production and consumption waste transfer to organizations that do not have aggregate rights to collect, utilize, process, store, dispose of, or remove waste, the

fee for emission into the environment shall be collected from persons whose activities result in such waste.

Responsibility of the production and consumption wastes owners, entities that carry out operations in the collection, transportation, utilization, processing, storage, placement or disposal of waste in each case, is determined depending on the type and extent of hazard of the waste in the manner established by the EC.

Courts shall bear in mind that, within the meaning of Article 297 of the EC, the extent and amount of liability is gauged by fulfillment of environmental activities by economic entities, financial including, aimed at the disposal of waste and reduction of its generation.

Footnote. Paragraph 22 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

23. In accordance with Article 101 of the EC, payment for emissions into the environment, including for disposal of production and consumption waste, shall be levied and collected in accordance with the rules established by Chapter 69 of the Tax Code for emissions into the environment in the special nature management procedure.

Emissions into the environment without an environmental permit issued in accordance with the established procedure are considered as emissions into the environment in excess of the established standards, excepting emissions of pollutants from mobile sources.

Fulfillment of tax obligations to pay for emissions into the environment shall not exempt the natural resources user from compensation for damage caused to the environment (paragraph 5 of Article 101 of the EC).

Footnote. Paragraph 23 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

24. In assessment of the economic damage to the environment, the courts, in accordance with paragraph 1 of Article 108 of the EC, shall proceed from the cost of restoring the environment and the consumer properties of the natural resources.

Economic assessment of damage from air, water and land resources pollution, also from the production and consumption waste disposal shall be determined by direct or indirect methods in accordance with Articles 108, 109 and 110 of the EC, Rules of Economic Assessment of Damage from Environmental Pollution, approved by order No. 535 of the Government of the Republic Kazakhstan dated June 27, 2007 (hereinafter - Damage Assessment Rules) and other legal acts, depending on the possibility to fully eliminate the consequences of the caused damage by environmental rehabilitation measures (paragraph 3 of Article 108 of the EC).

When assessing the cost of damage to the environment and public health, property of individuals and legal entities, the state, also to verify the calculations provided by the parties, the courts must apply the standards and rates established by the Rules for assessing damage to

each specific environmental object. If the damage assessment procedure is not regulated by a special regulatory legal act, its amount shall be determined by the actual costs of restoring the disturbed condition of the environment, taking into account the losses incurred, including lost profits.

In particular, the economic assessment of damage from unauthorized extraction of common useful minerals (sand, gravel, clay and others, hereinafter-CUM) shall be determined in ten times the value of the extracted minerals and (or) the manufactured marketable product obtained from them.

In the arising doubt about correctness of the presented calculations or an objection from one of the parties, the court is entitled, in accordance with Articles 77 and 82 of the Civil Procedure Code of the Republic of Kazakhstan (hereinafter - CPC), to draw on a specialist or to appoint an appropriate judicial examination in order to check and resolve the contradictions

Calculation of the assessment of damage caused by the nature user without proper permit shall be made separately for each pollution source using the appropriate coefficient of the Damage Assessment Rules.

In accordance with the Damage Assessment Rules, the results of instrumental measurements and analyses indicating that the established standards for emissions (discharges) of pollutants are exceeded, shall be applied for the period from the last inspection conducted during the state environmental control until the statute of limitations expiry.

It shall be borne in mind that calculation of the damage assessment is not subject to separate appeal in civil proceedings, since the calculation is the evidence subject to evaluation in conjunction with other evidence in the case in the manner prescribed by Chapter 7 of the Civil Procedure Code.

Footnote. Paragraph 24 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

25. Direct method of economic damage assessment shall be determined issuing from the actual costs and the most effective engineering, organizational, technical and technological measures necessary to restore the environment, replenish degraded natural resources and recover the living organisms.

Collection and analysis of the necessary materials, establishment of economic assessment of the caused damage shall be carried out by officials of the authorized body in the field of environmental protection within one month from the date the damage was established. The person who caused damage to the environment is required to present a letter of guarantee indicating specific measures to restore the environment and the timing of their implementation. Assessment of measures to eliminate the damage consequences shall be determined by their market value or opinion of an independent expert authorized to conduct expert assessments in the field of environmental protection.

Within the meaning of Article 110 of the EC and paragraph 4 of the Damage Assessment Rules, when determining the possibility to fully eliminate the consequences of the caused damage by environmental rehabilitation measures, the courts shall take into account only the direct method of economic damage assessment in order to immediately take measures to eliminate the consequences of pollution and mandatory measures to prevent environmental pollution and damage to it in any other forms.

At the stage of preparing a case for litigation on the application of environmental legislation, where the economic assessment of damage to the environment is determined by the direct method, the courts need to explain to the parties the provisions of Article 322 of the EC, by virtue of which, with the consent of the parties, on the court resolution, the harm could be reimbursed voluntarily, in kind, by binding the culprit to eliminate the damage to the environment.

Indirect method of economic damage assessment shall be applied where direct method of economic assessment of damage cannot be applied: pollution of atmospheric air, water resources, disposal of production and consumption waste, including radioactive, excess of established standards and excess extraction of natural resources. So, ingress of wastewater with harmful substances into the river involves the use of an indirect method of assessing damage to the environment, and the ingress of such water into a locality adjacent to the water body takes a direct method.

Economic assessment of damage by an indirect method shall be determined in the manner prescribed by paragraph 2 of Article 110 of the EC, and it is based on the difference between the actual environmental impact and the established standard, also on the charge rates for emissions into the environment, levels of environmental hazard and environmental risk.

26. Need shall be brought to notice of the courts to differentiate between liability of the nature user for evading mandatory environmental payments and liability for environmental damage.

A person who has caused harm to the life and health of individuals, damage to property of individuals and legal entities, the state or the environment shall have the right to voluntarily or by a court resolution to eliminate the harm or damage caused or compensate them in value terms at the expense of own or insurance funds to the state that existed at the time infliction of harm or damage, to carry out measures for the reproduction of natural resources, to reimburse the claimant's losses, including lost profits, or by transferring funds to the state budget or directly to the wronged party. The harm caused to the life and health of an individual shall be compensated in full, taking into account the incapacitation extent of the wronged person, the costs of his treatment and health recovery, expenses of caring for the patient, other expenses and losses. Thus, paragraph 1 of Article 21 of the Law on Radiation Safety provides for the right of citizens to compensation for harm caused to their life and health, and to compensation for property losses caused by exposure to ionizing radiation in excess of established limits or as a result of a radiation accident in accordance with the law.

If a person guilty of causing damage to the environment is not able to execute a judicial act to restore the natural environment in its natural form to the state that existed at the time of the damage, to provide an equivalent natural resource in exchange for the destroyed or damaged one, or to compensate it in cash, then the court that passed the judgment or the court at the place of the judgment execution may, in accordance with Article 246 of the CPC, at the request of the bailiff and (or) at the request of the parties to the enforcement proceedings, change the method and procedure for its execution.

Footnote. Paragraph 26 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

27. It shall be brought to notice of the courts that cases of appealing decisions, actions (inaction) of officials of the authorized environmental protection body, specially authorized bodies in the environmental protection, conservation, reproduction and use of natural resources, as well as local representative and (or) executive bodies, local self-government bodies on issues related to environmental legislation, including in protecting the interests of an indefinite range of persons, state bodies within their competence, legal entities, as well as the prosecutor - in cases provided for in paragraph two of part one of Article 292 of the CPC, are within the jurisdiction of specialized inter-district economic courts, with the exception of cases provided for by part four of Article 27 and subparagraph 2) of Article 28 of the CPC.

If, upon the control results, a protocol on an administrative offense was not drawn up, an order to eliminate violations of environmental legislation is subject to appeal pursuant to Chapter 29 of the CPC.

In accordance with article 126 of the EC, the requirement on mandatory compliance with the pre-trial settlement of the issues related to appeal of a decision, actions (inaction) of officials shall apply only to decisions, actions (inaction) of officials exercising state environmental control.

If the claimant (the applicant in accordance with Chapter 29 of the CPC) does not comply with the procedure for pre-trial settlement of the dispute established by law for this category of cases, and the possibility of applying this procedure is not forfeited, then in accordance with subparagraph 1) of the first part of Article 152 of the CPC, the judge shall return the statement of claim to the plaintiff.

If such a statement of claim is accepted, it shall be left without consideration on the basis of subparagraph 1) of Article 279 of the CPC.

Footnote. Paragraph 27 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

28. It shall be brought to notice of the courts that an environmental dispute is a dispute over the assessment of decisions made and being implemented of measures regarding environmental protection in the process of economic, managerial and other activities,

including the placement of facilities, conclusions of state environmental expertise, suspension, restriction or termination of enterprises' activities, the amount of fees for emissions into the environment, on compensation for harm caused to human health, the environment as a result of violation of the environmental legislation.

According to the provisions of Chapter 46 of the EC, environmental disputes between subjects of environmental legal relations can be settled through negotiations, including with the involvement of experts, or in accordance with the dispute resolution procedure previously agreed upon by the parties. Thus, through negotiations, disputes related to the execution, modification or termination of a contract in subsoil use can be resolved (Article 78 of the Code On Subsoil and Subsoil Use). The dispute resolution procedure agreed upon by the parties shall mean the possibility of resolving the dispute in accordance with the terms of the contract, legislative acts or an international treaty.

When resolving disputes involving legal entities and individuals, the courts must demand from the plaintiff the evidence of compliance with the pre-trial procedure for the dispute settling.

In the rationale of the ruling, the courts shall make references to the provisions of the current legislation, indicating the specific obligation assigned to the nature user by the relevant EC provisions, non-compliance with which constituted the ground for recognizing it as an offense.

It shall be brought to notice of the courts that when satisfying claims for damages, the rationale of the ruling must indicate indemnity amount to the state revenue, the details of the tax authority at the emission source location, or recovery of the damage amount to the republican budget revenue, with the exception of funds received from natural resources users on claims on compensation for harm by oil sector organizations subject to remittance to the National Fund of the Republic of Kazakhstan.

Footnote. Paragraph 28 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

29. When considering the claims of individuals and public associations for restriction, suspension and termination of economic and other activities of individuals and legal entities that have a negative impact on the environment, human life and health, the ground for satisfying such claims shall be, first of all, the establishment of the very the existence of such a negative impact.

When deciding on the satisfaction of claims for suspension, limitation or termination of environmentally harmful activity, the courts shall bear in mind that suspension, limitation or termination of the negative impact is possible not only by the closure of the facility, but also by binding the culprit to take actions aimed at elimination of the source of harmful influence: repair, reconstruction, installation of new treatment facilities, introduction of new production technologies, change of natural resources use conditions and the like, with the obligatory

indication of the period during which the defendant is obliged to eliminate the violation of the environmental legislation requirements.

Footnote. Paragraph 29 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

30. The court shall not accept the plaintiff's waiver of the claim if the evidence available in the case indicates the existence of grounds and conditions for bringing the defendant to property liability for committing an environmental offense, unless the offender voluntarily compensated the damage in full, and in cases related to coercive charges for the use of environmental objects.

It shall be brought to notice of the courts that the current environmental legislation does not provide for the possibility of reducing the amount of fees payable for the use of the environment.

Disputes considered in the order of special claim proceedings pursuant to the rules of Chapter 29 of the CPC are not subject to termination upon conclusion of a settlement or agreement between the parties on resolving a dispute (conflict) through mediation or a participatory procedure.

Footnote. Paragraph 30 as amended by the regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated 15.04.2021 No. 1 (shall be enforced from the date of the first official publication).

31. Courts must carefully examine the circumstances conducive to violation of the environmental legislation, and pass special rulings in the manner prescribed by Article 270 of the CPC.

32. In connection with adoption of this regulatory resolution, the regulatory resolution No. 16 of the Supreme Court of the Republic of Kazakhstan dated December 22, 2000 "On the practice of application by the courts of legislation on protection of the environment" shall be deemed to have lost force.

33. According to Article 4 of the Constitution of the Republic of Kazakhstan, this regulatory resolution is included in the existing law, is generally binding and shall come into effect from the day of its first official publication.

*Chairman
of the Supreme Court
of the Republic of Kazakhstan*

K. MAMI

*Judge
of the Supreme Court
of the Republic of Kazakhstan,
secretary
of the plenary session*

