

# LEGAL RESPONSIBILITY FOR ENVIRONMENTAL CRIMES IN KAZAKHSTAN THROUGH THE PRISM OF NATIONAL LEGISLATION

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**Annotation:** The article considers the main types of legal liability for environmental crimes provided for by the legislation of Kazakhstan. The author identifies the categories of crimes that are subject to administrative measures of responsibility, as well as sanctions provided for environmental offenses. Special emphasis is placed on the measures of responsibility provided for by criminal legislation.

**Keywords:** environmental crimes, investigation of environmental crimes, environmental code, environmental legislation.

Today, the issues of ensuring environmental safety are quite acute on the agenda of all countries of the world. According to UN reports, global environmental changes are causing unprecedented changes in the Earth's climate, provoking natural disasters that pose a serious threat to humanity. Global warming is being exacerbated by problems with the use of fossil fuels [1].

In order to ensure environmental safety at the international level, agreements and arrangements have been developed. In 1972, the United Nations Environment Programme was established with the primary purpose of providing leadership and promoting partnership in the field of environmental stewardship by creating opportunities to improve the quality of life of States and peoples without

compromising future generations. Key environmental principles recognized at the international level are enshrined in such documents as the Stockholm Declaration on the Environment of 1972, the Declaration on Environment and Development of 1992 (Rio de Janeiro), the declarations of the Millennium Summit of 2000 (New York) and the World Summit on Sustainable Development of 2002 (Johannesburg), and others.

Kazakhstan, being a part of the global world, contributes to the development of the sustainability of the ecological system. Kazakhstan has ratified a number of international treaties regulating environmental protection. Among them are the Kyoto Protocol to the UN Framework Convention on Climate Change, the Vienna Convention for the Protection of the Ozone Layer, the Convention on the Protection and Use of Transboundary Watercourses and International Lakes, and others.

National legislation and strategic documents play a special role in promoting environmental safety. The Constitution of Kazakhstan stipulates that the state aims to protect the environment that is favorable for human life and health [2]. In the Strategy "Kazakhstan–2050" special priority is given to environmental aspects. Thus, it is indicated that "all mining enterprises should introduce only environmentally friendly production", the agro-industrial complex is tasked with "becoming a global player in the field of environmentally friendly production" [3].

The policy of updating and modernizing legislation implemented in the country also includes updating environmental legal and regulatory instruments. On January 2, 2021, Head of State Kassym-Jomart Tokayev signed a new Environmental Code. According to its norms, "the polluter pays and corrects", in case of damage to the environment, the nature user is obliged to restore everything to its original state. In addition, the best available technologies will be introduced

at the enterprises to solve the problems of air, water and land pollution. At the first stage, it is planned to transfer 50 of the largest industrial enterprises, which account for 80% of pollution, to BAT. Also, 100% of the proceeds from the emission fee will be directed only to environmental measures [4].

It is important to note that the legislative base in the sphere of environmental protection in various areas are also appeared in Administrative Code, criminal Code, Land code, Forest Code, Code "On subsoil and subsoil use", the Law "On specially protected areas" and other normative-legal acts regulating relations in the field of protection, restoration and preservation of the environment, use and reproduction of natural resources in the implementation of economic and other activities related to the use of natural resources and impact on the environment.

These documents contain separate rules that establish responsibility for violation of the law. It should be noted that environmental crimes are subject to both administrative and civil responsibility, as well as criminal responsibility. Legal responsibility for environmental offenses is understood as the application of the appropriate penalty by the State, represented by the specially authorized bodies in the field of environmental protection, law enforcement agencies, and other authorized entities to a person who has committed an environmental offense.

This classification of types of responsibility for environmental crimes is enshrined in the Environmental Code of the Republic of Kazakhstan. According to Article 319, the types of environmental offenses include:

- \* violations of the environmental legislation of the Republic of Kazakhstan, entailing property liability;
- \* administrative offenses in the field of environmental protection, use of natural resources;
- \* environmental criminal offenses.

According to experts, the so-called “pyramid of law enforcement” is applicable in the context of different measures for environmental crimes. It implies that supervisory and oversight bodies are willing to increase penalties when "soft" measures to address violations do not lead to environmental compliance, and that penalties at the top of the enforcement pyramid are sufficiently serious and effective to prevent possible violations. So, at the so-called top of this pyramid are the most stringent measures of responsibility, when environmental crimes are punishable by imprisonment for up to 8 years, and ecocide (which is defined as the deliberate mass destruction of ecosystems and natural resources) – for up to 15 years. The use of the "pyramid of enforcement" method is widely practiced in OECD countries, where the hierarchy of responses to non-compliance serves as a method of ensuring the optimal combination of deterrence, persuasion and coercion [5].

For example, in practice, this tool can be implemented in the following order: warnings and instructions on taking measures to eliminate violations, administrative notices and penalties, fines and criminal prosecution. At the same time, experts note two key factors of the effectiveness of the "pyramid of law enforcement". Firstly, the willingness of supervisory and oversight bodies to follow "hard measures" if "soft measures" have not shown effectiveness. Secondly, the effectiveness of the measure at the top of the "pyramid", as well as its compliance with the degree of environmental damage caused by violators. International experience shows that first of all environmental authorities begin to respond to environmental violations with administrative measures, and move to more stringent measures if the measures show low efficiency.

It is important to identify the features of the types of responsibility for environmental crimes. Let us consider them in the order of the "pyramid of law

enforcement" that we have outlined, where administrative measures are at the heart, and at the top – the most "tough" measures providing for criminal liability.

First. As administrative penalties apply warning, administrative fine, deprivation of license, special permit, qualification certificate (certificate), suspension of its (his) actions on a particular activity or performance of certain actions, and other types of penalties provided by the Code of administrative offences of the RoK. For example, according to Article 335, the commissioning of new and reconstructed enterprises, structures and other objects that do not meet the requirements for the protection of atmospheric air entails a fine in the amount of thirty monthly calculation index.

Administrative prosecution is possible in cases where the actions of the offender have the composition of an administrative offense and there is absence of the elements of a criminal offense.

The basis of administrative responsibility is the presence of signs of structure of the ecological misconduct in the act, and also intentional or negligent fault of the liable subject (physical or legal entity), the existence of a legal provision that established prohibition, and the authorization for its violation.

The type of administrative penalties for administrative offenses also depends on who is the subject of the offense – an individual or a legal entity.

Second. Civil liability generally applies to damage caused to persons or property. Civil law measures may be taken in parallel with administrative or criminal penalties.

The third, criminal proceedings are often imposed for violations for which administrative measures have proved ineffective. For example, according to Article 339 of the Criminal code of the Republic of Kazakhstan, illegal making, acquisition, storage, sale, importation, exportation, shipment, transportation or destruction of rare and endangered species of plants or animals, their parts or

derivatives, including the types, the handling of which is regulated by international treaties of the Republic of Kazakhstan, as well as plants and animals, that imposed a ban on the use, their parts or derivatives, as well as the destruction of their habitats shall be punished by a fine of up to three thousand monthly calculation index, or corrective labor for the same amount, or community service for up to eight hundred hours, or restraint of liberty for a term up to three years, or imprisonment for the same term, with confiscation of property, with deprivation of the right to occupy certain positions or engage in certain activities for a term up to five years

Experts note that due to the fact that both criminal and administrative liability is provided for the same types of environmental offenses, competition between the relevant norms of criminal and administrative legislation is not uncommon. This is explained by the similarity of objective signs of crime and misdemeanor, which consist in violating the same rules: fishing, hunting, timber harvesting, mining, maintaining the cleanliness of water and air basins, etc. Also, a separate problem is the possibility of substituting criminal responsibility for administrative responsibility, and vice versa, since not all cases contain clear criteria for distinguishing a crime from a misdemeanor.

As a rule, crimes and misdemeanors are differentiated according to the degree of their public danger and depending on the harm caused. This view prevails both in theory and in law enforcement practice. However, it is not possible to quantify the degree of public danger of an act, since it is difficult to express the essence of the crime and misdemeanor in mathematically accurate, well-defined numerical expressions.

Given the fact that misdemeanors, like crimes, can be socially dangerous, it has to be recognized that only one circumstance can serve as a universal distinction between misdemeanors and crimes: misdemeanors cannot be

accompanied by serious consequences. For example, the Criminal Code of the Republic of Kazakhstan provides for criminal liability for pollution, clogging and depletion of water. At the same time, as factors that increase the degree of public danger of this act, the infliction of significant harm to the animal or plant world, fish stocks, forestry or agriculture is indicated.

A mandatory sign of a crime in this case is causing harm to human health or the environment, deterioration of the natural properties of the earth. Similarly, other types of crimes and misdemeanors in the field of environmental legislation are distinguished.

Thus, a review of the legislation allows us to conclude that environmental crimes are subject to all three types of liability. As in other countries, the legislative framework of Kazakhstan provides for administrative, civil and criminal liability. There is a distinction between such environmental violations as misconduct, for which material and/or administrative liability is provided, and crimes that entail criminal liability. To further ensure environmental safety, it is necessary to further improve environmental legislation and increase the effectiveness of law enforcement in the field of environmental protection.

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