

THE STATE OF ENVIRONMENTAL CRIME IN KAZAKHSTAN AT THE PRESENT STAGE

Zhumaxanov Yeldos

Deputy Chief for provision of courts' activity under
the Supreme Court of the Republic of Kazakhstan

***Annotation:** The article examines the key aspects in the area of crimes that infringe on public relations for the protection of a qualitatively favorable natural environment, the rational use of its resources and ensuring the environmental safety of the population. The author identified factors and trends that influence environmental crime, as well as its investigation. The paper outlines the current state and structure of environmental crime, identifying problematic issues through the prism of law enforcement.*

***Key words:** environmental crime, environmental legislation, investigation of environmental crimes.*

Today, the issues of investigation of environmental crimes are particularly relevant for Kazakhstan. Environmental crimes are one of the most socially dangerous and widespread types of illegal acts. In view of the severity of the negative consequences of a demographic, environmental, social nature at the regional, state and international levels, today they pose a real threat to environmental safety. This is sharply expressed in the deterioration of the quality of surface and ground waters, air, land and so on.

Studies of the ecological situation in Kazakhstan indicate that economic activities have a significant impact on the environment. And this applies to key areas of economic activity: for example, in agriculture, these are such problems as

wind erosion, desertification and land degradation. Regarding forestry, since 2001, deforestation has exceeded the area of regeneration of forests. In 2006, the felling area was 41,400 hectares, while the afforestation area was only 21,700 hectares. Altai forests were particularly affected as a result of many years of intensive deforestation [1].

It should also be mentioned that the oil and gas sector significantly contributes to air pollution. About 75 percent of the sector's pollutants are released into the atmosphere, 20 percent into water and the remaining 5 percent into soil. The local impact in the regions where oil and gas enterprises are centered is significant. About 99.9 percent of air pollution in the Atyrau region is associated with the work of oil and gas enterprises. A similar situation is observed in Kyzylorda (96.7%), Mangystau (94.1%) and West Kazakhstan (89.7%) regions. The mining sector is the second largest industrial sector in Kazakhstan after oil and gas. Because 95 percent of the total ore mined is waste rock, the mining industry produces large volumes of industrial waste. Kazakhstan is home to the world's largest mining complex of uranium ores. The production and processing of uranium ore led to soil pollution and formation of about 106 million tons of radioactive waste, posing a serious threat to public health. The radiation level of such wastes ranges from 35 to 3,000 mR / h, and the total amount of radiation exceeds 50,000 Ci.

The energy sector is one of the main sources of air pollution as a result of the use of low quality coal and inadequate purification equipment at power plants. Analysis of the ecological situation allows us to conclude that economic activity has a significant impact on the pollution of natural resources. Air pollution is a serious problem for Almaty and other large industrial cities of the republic. Regarding water resources, the most polluted basins include the watersheds of the Ural and Irtysh, which receive wastewater from chemical, metallurgical, oil

refining and machine-building enterprises. The issues of waste management associated with the activities of industrial enterprises are topical.

Environmental improvement in the country requires a set of measures, and one of the strongest mechanisms for regulating the activities of legal entities and individuals is the legislative framework, which provides for both administrative and civil law and criminal liability for environmental crimes.

According to experts, against the background of rising of environmental crime, there is an increase in the number of corruption crimes, which cover all areas of the use of natural resources (oil and gas production, timber industry, extraction of aquatic biological resources, land use, etc.) [2]. In addition, the emergence of such forms of environmental criminal behavior as organization in criminal activity, vandalistic motives when encroaching on natural objects and others is noted.

As before, the largest number of registered crimes falls on Art. 335 of the Criminal Code of the Republic of Kazakhstan "Illegal catch of fish resources, other aquatic animals or plants", the bulk of which is carried out in the Caspian Sea. Poaching of sturgeon in Kazakhstan has taken on an industrial scale. In 2017, 5980 violations of environmental legislation were identified. At the same time, 5001 persons were brought to administrative responsibility, 17 persons were brought to criminal responsibility. Administrative fines were imposed in the amount of 87.8 million tenge, of which 74.5 million tenge was recovered to the state budget. 161.3 tons of fish were seized from violators. Also seized 188 units of floating equipment and 4383 units of fishing gear [3].

Over the past ten years, the number of detected crimes under Art. 339 of the Criminal Code "Illegal treatment of rare and endangered, as well as prohibited for use species of plants or animals, their parts or derivatives" has increased almost 4 times compared to 2008. According to the UN, well-organized criminal

groups have turned the illegal use of natural resources into a highly profitable professional occupation for fishing for protected and endangered species of animals.

A stable number of registered crimes is noted under Article 337 of the Criminal Code of the Republic of Kazakhstan "Illegal hunting". In 2016, 65 crimes were registered, which accounted for 21.3% of the total number of registered environmental crimes. In the following years, there is a tendency to increase the number of crimes: in 2017, 204 crimes were registered.

According to Article 334 of the Criminal Code of the Republic of Kazakhstan "Illegal felling of trees and shrubs", 174 crimes were registered in 2017, which is 37% more than in 2016.

An important indicator of the effectiveness of the fight against environmental crimes is the number of suspended cases. From 2012 to 2017, the number of suspended cases did not decrease and, as a rule, slightly less than half of the cases were suspended. In 2017, the number of suspended cases in the overall structure of environmental crimes was 46.8 %. In general, cases are suspended under paragraph 1 of Part 1 of Article 50 with regard to the failure to identify the person to be brought as an accused.

In 2019, the Environmental Departments sent 556 lawsuits to the courts, including 63 lawsuits that have been transferred since 2018. As of January 2020, the court is considering 61 claims for compensation in the amount of 34 180 327 915 tenge.

In January–August 2020, 459 environmental criminal offenses were registered in the country — 2.1 times less than a previous year. In the context of the article of environmental offenses of the Criminal Code for January-August 2020, 35.9% of cases were related to illegal handling of rare and endangered, as well as prohibited plant or animal species, their parts or derivatives: 165 offenses,

plus 36.4% for the year. Another 29.2%, or 134 offenses, were related to illegal extraction of fish resources, other aquatic animals or plants; 14.2% — for illegal hunting: 65 offenses, plus 18.2% for the year.

Statistics indicate insufficient use of the preventive potential of criminal legal measures to counter environmental criminal offenses. Of the environmental criminal offenses registered in 2017, only one of the four offenses was convicted. In three of the four 7 registered environmental criminal offenses, the perpetrators managed to avoid responsibility.

Administrative penalties are imposed much more often than criminal penalties – the latter account for less than one percent of the total number of cases. With the enforcement of legislation on the protection of atmospheric air and water resources, waste management and hazardous chemicals, the proportion of cases in which criminal proceedings are initiated is reduced to several tenths of a percent. The bulk of criminal offences relate to the protection and use of flora and fauna. Administrative cases are distributed by environmental components (atmospheric air, water resources, animal and plant worlds) in a more balanced way: each component accounts for several tens of thousands of administrative cases.

Such law enforcement practice reduces the effectiveness of the criminal-legal fight against environmental crime. Therefore, it is necessary to improve law enforcement practice in terms of compliance with the principle of inevitability of responsibility and punishment for environmental criminal offenses.

Some researchers believe that the process of proof in administrative law enforcement takes much less time compared to criminal or civil lawsuits for compensation for environmental damage. Signs of an administrative offense in the field of environmental protection and nature use are mainly violations related to the established indicators and standards (delays, lack of compulsory environmental activities, exceeding environmental standards, the lack of treatment

facilities or metering devices, failure to report, etc.). This makes it easier to establish and prove the facts necessary to bring a person to administrative responsibility, since the case contains indicators that act as evidence [4].

It should be noted that in the context of considering environmental crimes in civil or criminal proceedings, it is difficult to establish facts, for example, the degree of environmental damage, damage caused to public health, intent to commit an illegal act, the causal relationship between an illegal act and environmental damage, etc. This applies primarily to the protection of atmospheric air, water bodies, mineral resources and land. However, it should also be noted that the establishment of criminal liability in relation to specific species of fauna and flora is not particularly difficult. For example, it is provided for on the grounds of the place of commission of the act (for example, in a protected area or in spawning grounds) and the use of special tools and means (explosives and chemicals, electric current and other methods of mass destruction of biota).

As an important aspect of evidence in administrative and criminal proceedings, scientists identify the subject of environmental crime. In Kazakhstan, both an individual and a legal entity can be recognized as an administrative offender, and only an individual can be a criminal offender. This makes it much more difficult to bring the perpetrator to justice in the case of environmental crimes committed, for example, by enterprises such as an industrial enterprise.

In areas where offenders are most often individuals and small businesses, in many cases, an administrative fine is also not an effective way to deter violations. Examples include poaching, illegal logging of trees and plantings in localities, and illegal construction on the territory of water protection zones. This is due, among other things, to socio-economic problems (the offender's dependence on illegal activities as the only source of income; there is no official income for the offender, which can be imposed an administrative fine, because of

the disproportionality of the imposed fine to the economic benefits derived from illegal activities).

The analysis of statistical data, as well as expert opinions, allows us to identify key issues related to the investigation of environmental crimes, as well as the practice of law enforcement of current environmental legislation. First, there is a need for a clear legislative delineation of individual issues in the context of criminal and administrative offences. Secondly, experts note that it is necessary to introduce the principle of compliance of legal liability measures with the degree of public danger caused by an environmental crime. Thirdly, it is necessary to carry out information and explanatory work with the population in order to prevent environmental crime. Fourth, researchers note a low level of state environmental control. Fifth, when investigating environmental crimes, there is a lack of modern methods and tools for assessing the damage caused to nature. And, sixth, an important problem is the priority of production and technological needs over economic ones.

The identified range of issues in the field of fight against environmental crime indicates that it is necessary to further strengthen the set of measures to prevent and combat environmental crime, including improving legislation and methods of investigating environmental crimes.

References:

1. Обзоры результативности экологической деятельности. Казахстан. Второй обзор. ЕЭК ООН. – Нью-Йорк, Женева, 2008.

URL: https://unece.org/fileadmin/DAM/env/epr/epr_studies/kazakhstan%20II%20r.pdf

2. Сулейменова С.Ж. Коррупционные проявления в сфере использования и охраны естественных природных ресурсов, в частности

водных объектах / С.Ж. Сулейменова // Вестник КазНУ. Серия юридическая.
– 2011. – № 3 (59). – С. 117–118.

3. Шестой национальный доклад РК о биологическом разнообразии. –
Астана, 2018.

URL: <https://www.cbd.int/doc/nr/nr-06/kz-nr-06-ru.pdf>

4. Пути совершенствования системы природоохранного
правоприменения в Казахстане. ОЭСР. 2009.

URL: <https://www.oecd.org/env/outreach/44092434.pdf>.