

## Access to environmental information in legislation of the republic of Kazakhstan

Serikkali Tynybekov, Roza Yerezhepkyzy, Aaliyah Kartbayevna Berdibayeva, Aynash Akimsalovna Esekeeva, Nurlaym Kambatyrovna Mynbatyrova, Elena Akopova

Al-Farabi Kazakh National University

**Abstract.** In this article, the authors analyzed the legislation of the Republic of Kazakhstan and the ways to implement the Aarhus Convention. Questions of access to information, participations of the public in decision-making and access to justice are guaranteed by the Constitution of the Republic of Kazakhstan. Existing legislation of the Republic of Kazakhstan grants the public the right to obtain information, including ecological information, public access to decision-making and justice. Although the legislation of the Republic of Kazakhstan both sectoral and general direction, there is legislative recognition, but need to develop specific procedures and mechanisms for their implementation, taking into account the provisions of the Convention.

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### Introduction

Years of independence in Kazakhstan became years of education and formation of absolutely new state system of ensuring ecological safety, management of environmental protection and environmental management. Ecological safety is one of the main strategic components of national security of the Republic of Kazakhstan and the most important aspect of the state priorities. Distribution of ecological information among the population has the big educational and propaganda importance in the solution of questions of ensuring ecological safety.

Ecological information is information about the state of environment, the degree of negative impact on its business activities, provided by bodies on environmental protection by inquiries of citizens and public organizations. To ecological information belongs information: about a condition of water, air, lands, soils, flora and faunae; about threats to health of citizens; about the activity influencing a state of environment, creating threat of negative impact on human health; about actions directed on prevention of negative impact on environment. One of the important prerequisites for sustainable development of modern society recognizes the active and effective participation of citizens and civil society in decision-making on environmental issues.

In the solution of social-and-ecological problems public activity of the population is in direct dependence not only on level of its ecological culture, but also on such factors as awareness of residents about the ecological state of the urban environment, relationship of public environmental organizations with the population, existence of the settled standard rules of law, allowing to participate

in adoption of socially significant decisions. The public can effectively participate in the solution of environmental problems when it is informed on existing threats to environment and health of citizens. It is important to create conditions for obtaining information on inquiry from government bodies, as well as organizations and companies whose activities have or may have an adverse impact on the ecological situation. Public access to environmental information in Western nations is an important part of "environmental rights." [1]. Dealing with environmental matters in an "open society" requires public access to environmental information, as well as public participation in environmental decisions [2]. **Public access to ecological information of Republic of Kazakhstan.**

The issues of public access to ecological information have been reflected in a number of international ecological conventions ratified by the Republic of Kazakhstan. The most important issue is the Convention of the European economic commission of the UN on access to information, participation of the public in decision-making process and access to justice on the questions concerning Environmental Matters on Convention. In some opinions, the belief that governments must allow greater public access to environmental information has resulted in an international trend toward the increased availability of environmental information [3].

The Republic of Kazakhstan ratified this international legal document on October 23, 2000 [4]. The convention establishes high requirements for work of government bodies and officials with public

requests for ecological information that must be observed in Kazakhstan.

Kazakhstan became the part of Convention Party on January 11, 2001. Basic obligations of Kazakhstan under the Convention are::

- 1) access to information;
- 2) public involvement in decision-making process and inclusion in process of all interested parties;
- 3) access to justice ( legal aspects of the decision) on matters relating to the environment.

The measures taken by the state, for realization the rights for citizens granted by the Convention, these rights providing free implementation conform to requirements as are fixed in provisions of standard legal acts of the Republic of Kazakhstan [5].

The Constitution has supreme legal force and direct effect on the entire territory of the Republic of Kazakhstan. According to the article 4 of the Constitution of the Republic of Kazakhstan:

"The laws in force in the Republic of Kazakhstan are standards of the Constitution, laws corresponding to it, other regulations, the international contractual and other obligations of the Republic, and also standard resolutions of the Constitutional Council and the Supreme Court of the Republic.

The international contracts ratified by the Republic, have a priority before its laws and are applied directly, except cases when from the international treaty follows that its application requires the publication of the law.

All laws and the international treaties to which participate Kazakhstan are published. Thus, the right to information is a constitutional right of citizens of the Republic of Kazakhstan. In compliance with article 18 part of 3 Constitutions of the Republic of Kazakhstan:

"Government bodies, public associations, officials and mass media are obliged to provide to each citizen opportunity to study documents, decisions and information sources mentioning his rights and interests" [6].

Definition of the concept "ecological information" is given in point 3 of article 2 of the Aarhus Convention, and it covers the following types of information:

- a) about a state of environment, including its separate elements (air, water, the earth, the soil, landscapes and natural objects, the biological diversity, genetically modified organisms, etc.) and their interaction;
- b) about factors of impact on environment (polluting substances, noise, radiation, etc.);

c) about activity or measures, including policy, the legislation, programs and the plans, capable to make impact on environment;

d) about a state of health and safety of people, objects of culture and buildings in connection with influence or potential impact on them ecological factors [5].

#### **Ecological legislation in the Republic of Kazakhstan.**

In improvement of the ecological legislation of the Republic of Kazakhstan by implementation of standards of the convention the Aarhus convention played a significant role. Most of the provisions of the Aarhus convention were implemented in 2007 in the Ecological Code of the Republic of Kazakhstan. The content of the concept "ecological information" is disclosed by article 159 of the Ecological code of the Republic of Kazakhstan according to which ecological information includes information and data about:

- 1) state of environment and its objects;
- 2) factors of impact on environment, including its pollution;
- 3) program, administrative and other measures which have or may have an impact on the environment;
- 4) ecological standards and ecological requirements to business and other activities;
- 5) planned and realized actions for environmental protection and financing;
- 6) the activity making or capable to make impact on environment, process of decision-making and results of inspection ecological checks on it, including the calculations considered thus, analyses and other data concerning environment;
- 7) impact of a state of environment on health, safety and conditions of accommodation of the population, objects of culture, buildings and constructions [7].

According to article 164 of the Ecological code of the Republic of Kazakhstan guarantees to individuals and legal entities the right of a free access to public state information resources of ecological information and assigns to government bodies and the officials who are carrying out the state functions, and also on the legal entities providing population services on the basis of the public contract, related to the environment, to provide open access to ecological information, including on inquiries of individuals and legal entities [7].

The ecological code of the Republic of Kazakhstan in article 160 provides an obligation of government bodies to extend through posting on the Internet or public informational resources the following types of ecological information:

- 1) reports on a state of environment;

2) projects and texts of regulations and international treaties concerning environmental protection;

3) projects and texts of the documents concerning a state policy, programs and plans in the field of environmental protection;

4) reports on results of control, inspection and law-enforcement activity in the field of environmental protection;

5) information referred to the list of basic e-government services in the field of environmental protection [7].

Activities of government bodies and other legal entities for formation and distribution of ecological information is regulated by article 160 of the Ecological code, according to which:

Data collecting, account, storage and distribution of ecological information by government bodies and other legal entities are carried out for information support of activity of government bodies, planning and implementation of measures for environmental protection and realization of the right of citizens to a healthy life and a healthy environment [7].

The ecological information which is subject to obligatory collecting, account and storage by government bodies and other legal entities, established by the legislation of the Republic of Kazakhstan.

Specially authorized government bodies data on planned and carried-out activity which can make considerable impact on environment, and also about any emergency situations of natural and man-made character posing serious threat for environment, life and population health are subject to obligatory check and the account.

In order to systematize the ecological information and improving access to it, government bodies form and support electronic inventories of ecological information.

Centralized data collection, account and storage of ecological information in Kazakhstan are carried out by the State fund of ecological information. By the order of the Minister of environmental protection of the Republic of Kazakhstan dated by September 12, 2005 No. 264-p in accord with "Environmental Protection Information and Analysis Center" was created the Ecological information center [8].

According to article 161 of the Ecological code of the Republic of Kazakhstan, for information support of government bodies, planning and implementation of measures for environmental protection and the right of citizens to a healthy life and a healthy environment. The fund of ecological information carries out collecting, the account, storage and distribution of ecological information.

The fund of ecological information contains National reports on a state of environment in the Republic of Kazakhstan, reports on research works in the field of environmental protection, standard and legal documents. Ecological information is stored on paper and electronic media [9].

Fund experts continually monitors issue of national and international, methodical and legislative documents in the field of environmental protection, environmental management, labor protection, health, ecological and industrial safety, emergency situations. Works in creation of the uniform storage, constantly filled up by information systematized in the directions – the protection of the environment and management of natural resources. The system has the effective and simple interface of interaction with the user. The system contains developed standard documentation and methodical instructions on environmental protection [10].

Information resources of the State fund of ecological information include materials and documents:

1) represented in obligatory procedure by government bodies and legal entities;

2) forwarded by natural and legal entities on a voluntary basis.

The following types of ecological information are a part of the State fund of ecological information:

1) inventories of natural resources;

2) register of emissions and transfer of pollutants and other registers of ecological information;

3) list of ecologically dangerous productions;

4) data of environmental monitoring;

5) materials of an assessment of impact on environment and the state environmental expertise with the consent of the customer of planned activity;

6) regulatory legal acts and regulatory technical documents in the field of environmental protection and use of natural resources;

7) reports on performance of the research and developmental works connected with environmental protection;

8) scientific and technical literature in the field of ecology and eco-friendly technologies;

9) other materials and the documents containing ecological information.

According to article 163 of the Ecological code of Republic of Kazakhstan established that ecological information is public, except for the cases provided by laws of the Republic of Kazakhstan. Access to individual information and data which constitutes a public environmental information, provided by the request of individuals and legal entities, distribution in the mass media, in special editions, available on

the Internet, as well as using other public information and communication tools.

Access to government information resources (information databases) environmental information is implemented by generating and maintaining public registers and inventories of environmental information. Access to documents and information resources containing information and data with limited access, according to the procedure, established by the legislation of the Republic of Kazakhstan.

The right of a free access of individual and legal entities to public state information resources of ecological information is enshrined in article 164 of the Ecological code of the Republic of Kazakhstan, according to which:

- individual and legal entities have the right of a free access to public state information resources of ecological information;

- government bodies, and also the officials who are performing the state functions, or the individual and legal entities providing services to the population on the basis of the public contract, concerning to environment, are obliged to provide open access to ecological information, including on inquiries of individual and legal entities.

- other individual and legal entities who are carrying out activity in the territory of the Republic of Kazakhstan, are obliged to provide the ecological information relating to the effects on the lives and health of citizens.

- individual and legal entities have the right to ecological information in a required form if there are no bases to provide it in other form.

The ecological code of Kazakhstan in compliance with article 160 provided an obligation of government bodies to distribute through posting on the Internet and applications of other public information tools the following types of ecological information:

- 1) reports on a state of environment;
- 2) projects and texts of regulations and international treaties concerning environmental protection;
- 3) projects and texts of the documents concerning a state policy, programs and plans in the field of environmental protection;
- 4) reports on results of control and inspection and law-enforcement activity in the field of environmental protection;

5) The information referred to the list of basic e-government services in the field of environmental protection. [6].

In the Republic of Kazakhstan the list of the information services provided by government bodies to individual and legal entities, is provided by article

15-2 of the law "About Administrative Procedures" according to which information services provided to individual and legal entities, government bodies create websites which have to contain:

1) general information about the activities of the government body;

2) list of structural divisions of government body and its subordinated organizations, also data on their heads;

3) the list of territorial bodies (at their existence), their tasks and function, and also data on their heads;

4) lists of registers, inventories which are under authority of government body;

5) lists of public electronic information resources and the electronic services provided to individual and legal entities;

6) regulatory legal acts which adopted by government body and have been put into operation;

7) sample application documents accepted by public authorities for consideration in accordance with the laws and other normative legal acts;

8) data on the open competitive bidding (tenders, auctions), expert examinations and other actions and conditions of their implementation, and also condition of participation in them individual and legal entities;

9) information on an order of consideration of request of individual and legal entities in government body, the schedule of a reception of citizens, reviews of requests, information on results of their consideration and the taken measures;

10) data on the declared vacancies of government body, qualification requirements to candidates for replacement of vacancies of public service;

11) texts of official performances and statements of heads of government bodies and their deputies;

12) "FAQ" service;

13) interactive quizzes of citizens;

14) news line;

15) statistical data and the indicators characterizing a state and dynamics of the industry (spheres) in part related to the competence of the public body;

16) analytical reports and reviews of information character on activity of government body;

17) postal addresses, e-mail addresses, phones of help services of government body, its structural divisions, territorial bodies and subordinated organizations;

18) other sections [11].

News line updating on the website of government body should be daily updated, updating

of other sections is carried out as required, but at least once a week.

In Kazakhstan the Authorized body in the field of environmental protection will organize maintaining the State fund of ecological information which carries out the centralized collecting, account and storage of ecological information. Information resources of the State fund of ecological information include materials and documents:

- 1) represented in obligatory procedure by government bodies and legal entities;
- 2) forwarded by natural and legal entities on a voluntary basis.

The following types of ecological information are a part of the State fund of ecological information:

- 1) inventories of natural resources;
- 2) register of emissions and transfer of pollutants and other registers of ecological information;
- 3) list of ecologically dangerous productions;
- 4) data of environmental monitoring;
- 5) materials of an assessment of impact on environment and the state environmental expertise with the consent of the customer of planned activity;
- 6) regulatory legal acts and regulatory technical documents in the field of environmental protection and use of natural resources;
- 7) reports on performance of the research and developmental works connected with environmental protection;
- 8) scientific and technical literature in the field of ecology and eco-friendly technologies;

By the law of the Republic of Kazakhstan "About emergency situations of natural and man-made character" in compliance of the article 7 it is established that in emergency situations of natural and man-made character citizens of Kazakhstan have the right:

- to be informed on risk to which they can be exposed in certain places of stay in the territory of the Republic of Kazakhstan, and about measures of necessary safety;
- to apply in person, sent to the government body and local self-government, individual and collective appeals for the protection of citizens, environment and business facility of emergency situations and the consequences caused by them;
- to participate in activities for the prevention and elimination of emergency situations, to use facilities of collective and individual protection, and other property intended for protection of citizens;
- to protect the life, health and personal property in case of emergency situations;
- to receive the compensation and benefits for the damage caused to their health by involving them

for performance of duties during elimination of emergency situations;

- to receive social security in case of disability in connection with a mutilation or a disease, losses of the breadwinner, died from injury or illness if they occurred as a result of performing duties under emergency situations in accordance with the legislation of the Republic of Kazakhstan on state social benefits;
- to compensate the damage caused to their health and property as a result of emergency situations.

According to article 17 of the above-named law it is established that information in the field of emergency situations of natural and man-made character made by data on degree of risk and the harm of activity of the organizations necessary for safety, consequences, measures for the prevention and elimination of emergency situations. It is open and public, is subject to publication through mass media, communication systems and notifications. Concealment, untimely representation or representation by officials of obviously false information in the field of emergency situations of natural and man-made character isn't allowed [12].

Ecological information, according to the part 1 article 17 of the law of the Republic of Kazakhstan "About the state secrets" isn't subject to a classification and fixed by article 163 of the Ecological code of the Republic of Kazakhstan, so it's must be public, except for the cases provided by laws of the Republic of Kazakhstan.

According to article 17 of the law of the Republic of Kazakhstan "About the state secrets" the list of information which isn't subject to a classification, includes information on emergencies and disasters which threaten the safety and health of citizens, and their consequences, as well as natural disasters, their official forecasts and consequences; on state of the environment, health, sanitation, demography, education, culture, agriculture, as well as on crime, on violations of human rights and freedoms, on the facts of violations of the law by government bodies and organizations.

The officials who have made the decision on a classification of listed data or on their inclusion for this purpose in carriers of data, making the state secrets, bear responsibility according to the legislation of the Republic of Kazakhstan. Citizens have the right to appeal against such decisions in a judicial order [13].

#### **The general legislative requirements for registration of request for information in the Republic of Kazakhstan.**

The general legislative requirements for registration of request for information are defined in

article 6 of the law of the Republic of Kazakhstan "About the order of consideration of individual and legal entities" and include the following:

Treatment must be addressed to an entity or official, who should answer according to their labor function.

Treatment of an individual should contain: surname, name, and also middle name, the postal address; treatment of the legal entity - name, the postal address, reference number and date. Treatment must be signed by the applicant or certified digital signature.

Before submitting a complaint, it should contain: name of the subject or a position, surnames and initials of officials, whose actions are appealed, motives of the treatment and the requirement.

To the applicant who has directly wrote to the subject, issued check with the date and time, name and initials of the person who received treatment.

Treatment, which is not requires obtaining information from other entities, officials, or check on-site, considered within fifteen calendar days. Treatment, which requires obtaining information from other subjects, officials or check on-site, considered within thirty calendar days from the date of receipt by official. In cases where it is necessary to conduct further investigation or inspection, the period of consideration may be extended for not more than thirty calendar days, as reported by the applicant, within three calendar days from the moment of extension of term of consideration. If the issue outlined in the treatment requires a long period, the treatment will be under additional control up to its final execution, as reported to the applicant within three days [14].

According to the current legislation of the Republic of Kazakhstan for not presentation, untimely presentation, and also presentation to the public incomplete or unreliable ecological information provides material, administrative and criminal liability.

So, according to article 84 of the Code about administrative offenses of the Republic of Kazakhstan, administrative responsibility for the following actions is established:

- illegal refusal in submission of the documents collected in accordance with the established procedure, the materials which are directly affecting the rights and freedoms of the natural person;
- providing individual with incomplete or obviously false information;
- illegal reference of public information to information with the limited access, not having signs of penal act;
- illegal restriction of the right on access to information resources [15].

The criminal code of the Republic of Kazakhstan provided criminal liability according to article 268 for concealment or distortion of information on events, the facts or the phenomena creating danger to life or human health or for environment, made by the person, obliged to provide the population with such information [16].

Not providing ecological information, providing incomplete and unreliable information or with violation of established periods can be appealed in higher government body (the higher official) or in court. Thus submission of the complaint to higher official isn't an obstacle for the simultaneous appeal of the applicant to court. Government bodies and officials must avoid handling complaints in harm to the complainant or in which interests it was given, and also not to send the complaint to the officials which actions are appealed.

The order of the judicial appeal is established by Chapter 27 of the Code of civil procedure of the Republic of Kazakhstan which is called "Affairs production about contest of decisions and actions (or inaction) public authorities, local government, public associations, the organizations of officials and civil servants".

According to article 279 of the Code of civil procedure, to decisions, actions of government bodies, local governments, public associations, organizations, officials, the civil servants, challenged in court, are collective and individual decisions and actions ( or inaction) in result of which:

- 1) violation the rights, freedoms and interests of citizens protected by the law and legal entities;
- 2) created obstacles to implementation by the citizen of his rights and freedoms, and also the rights and interests of legal entity protected by the law;
- 3) any duty is illegally imposed on the citizen or the legal entity, or they are illegally made responsible [17].

The citizen and the legal entity has the right to appeal to court with the statement within three months from the date of when they knew of violation of their rights, freedoms and interests protected by the law. Skipping three month period for filing an application isn't the basis for court to refuse adoption of the statement. The reasons for missing the deadline clarified at the hearing when considering an application and can be one of the bases to refusal in satisfaction of the statement.

## Conclusion

Analysis of a current legislation of the Republic of Kazakhstan listed above shows that in general in terms of access to ecological information it corresponds to provisions of the Aarhus convention. General procedure of providing citizens and public

with ecological information, precisely defined in the current legislation of the Republic of Kazakhstan.

Following measures to improve the legislation in this area are offered:

1. In practice, revealed that only a small part of the ecological information interest public, becomes public through publication in the media and posting on the web sites of the government bodies. The most part of ecological information is available only through its request. For public is problematic to receive information about chemical substances, because there is no monitoring on them and as a result, government bodies have no such information. Also materials of an assessment of impact on environment and the state ecological assessment are not available for public; as such information can be included in structure of the State fund of ecological information only with the consent of the customer.

2. According to the Aarhus convention it is necessary legislatively fix an annual development and the publication of the National report of a state of environment. To implement this proposal is necessary to fix the competence of the authorized body in the field of environmental protection on development of the National report of a state of environment and approval of its development.

3. For environmental information, although it is not contrary to the obligations of the Republic of Kazakhstan on the Aarhus Convention Compliance the right of public authorities to charge haven't a single meaning assessment. The ecological code of the Republic of Kazakhstan according to article 166 part 3 is guaranteed providing a free ecological information only through the public state electronic register and the inventory of ecological information, and regarding to part 1 article 166 of the Ecological code provides to government bodies the right to charge a fee for the provision of environmental information.

For more effective and full implementation by the Republic of Kazakhstan of the obligations following from provisions of the Aarhus Convention, and also for ensuring publicity in work of government bodies on providing ecological information, decrease in financial barriers to access to ecological information and creation of transparent system of such access, necessary to adopt Uniform Rules for government bodies on establishment of tariffs on fee for providing ecological information.

4. For full realization of the rights of citizens and legal entities on access to ecological information:

- to reduce the list of information which can be included in the State fund of ecological information only with the consent of the customer;

- to the officials handling the state environmental control, to provide the publication of

results of all inspections during which revealed violations of environmental legislation;

- inspection information on the facts of violation of the ecological legislation which contain signs of penal act, shouldn't be confidential;

- to develop criteria of interest of the public in information with limited access [18].

In our opinion, it is necessary to make the following changes to the legislation of the Republic of Kazakhstan in questions of access of the public to ecological information.

#### **Corresponding Author:**

Dr. Serikkali Tynybekov

Al-Farabi Kazakh National University

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