

## ENVIRONMENTAL CODE. 10 YEARS OF CONTRADICTIONS AND INEFFICIENCY

Valeriy Krylov,  
Forestry specialist,  
Almaty, Kazakhstan

Sergey Kuratov,  
Ecological Society Green Salvation,  
Almaty, Kazakhstan

Ten years ago in January 2007, the Environmental Code of the Republic of Kazakhstan was adopted. The nature protection officials insisted on its development. “The Environmental Code is a set of laws that will reflect all aspects related to environmental protection,” explained the vice minister of environmental protection. It was planned to reform environmental legislation, to bring it closer to the environmental standards of the European Community and international legal standards.<sup>1</sup>

With such serious intentions, it was necessary to carefully study all aspects of environmental law, including international law. And such work should have taken a very long time. It should have also been taken into account that in 1997, environmental legislation was already reformed and good laws were adopted, practical implementation of which, in fact, has just begun.

But, alas! The Draft Environmental Code was presented for a review of the Majilis of the Parliament, in accordance with the Government Resolution No.567 dated on June 21, 2006.<sup>2</sup> Already on June 23, the Draft was introduced to the Majilis. And six months later it came into force! It was adopted hastily; it seemed like the law developers were mainly guided by a rush to report on time. As a result, it turned out to be another inadequate regulatory legal act, which only created a smokescreen that covers the legal chaos reigning in the sphere of environmental protection.

However, in the victorious reports in the first years after adoption of the Code, the opposite was asserted. “The Environmental Code of the Republic of Kazakhstan, adopted on January 9, 2007, introduces significant changes to the environmental protection system adopted in Kazakhstan. The administrative and command approaches, the old system of rationing, the priority of penal sanctions shall be replaced by effective economic levers that are a powerful factor in regulating economic activity in the use and protection of natural resources, prevention of environmental violations, and stimulation of introduction of new technologies. The Environmental Code defines the legal framework for state policy in the field of environmental protection, ensuring a balanced solution

of socio-economic tasks, preserving and restoring the environment, biological diversity, and ensuring environmental security of the country.”<sup>3</sup>

Even six years later, when the defects and contradictions of this normative legal act became evident, the official point of view did not change. Concept of Transition of the Republic of Kazakhstan to the “Green Economy” states: “To counter the adverse effects of accelerated economic growth, on January 9, 2007, the Government of Kazakhstan adopted a new Environmental Code that regulates all aspects of processes affecting the environment, in particular, emissions of gases and other pollutants into the atmosphere, contains general norms used to control and regulate industrial emissions in Kazakhstan.”<sup>4</sup>

Of course, the Code was not able to reflect “all aspects related to environmental protection.” “Effective economic levers that are a powerful factor in regulating economic activity in the use and protection of natural resources,” have never been created. And the state environmental policy has not even been developed for 25 years of existence of independent Kazakhstan. The Concept of Environmental Security of the Republic of Kazakhstan for 2004-2015, which also had high hopes, was quietly abolished in 2009.<sup>5</sup> The Concept of Transition of the Republic of Kazakhstan to the “Green Economy” outlined ways to improve the environmental situation, by addressing some of the most acute economic problems.

Hasty poor-quality preparation of the Environmental Code became the main reason for it to be subjected to changes and additions 52 times during the 10 years of its existence. That is, on average more than 5 times a year. And the first change was made already in six months, on July 27, 2007.<sup>6</sup> And further—more. The most important articles concerning authority of the government, functions of the executive organs of power, environmental impact assessment, environmental assessment, and access to information have undergone major changes. Some “innovations” literally paralyzed the activity of the central authorized bodies of nature protection.

In 2008, the “improvements” were introduced to the Article 48, which regulates the division of powers in conducting the state environmental assessment. Now all types of environmental assessment, except for the most complex types of the I category, are under authority of local executive bodies. They have very extensive powers acting as bodies which order projects, conduct environmental assessment, and approve the projects. The matter has reached the point that local branches of akimats<sup>7</sup> conduct environmental assessments on the territory of national parks which are the state property!

By the way, the Code does not mention a word about who and how to conduct an environmental assessment for facilities that fall under international conventions. Judging by the actions of akimat officials, they believe that this is

part of their authority. The above named amendments contributed to excessive weakening of the authorized body for environmental protection, dispersion of its functions and their transfer to the local executive bodies.

Already in 2009, the authors of the Fourth National Report of the Republic of Kazakhstan on Biological Diversity warned: “The lack of a clear division of powers between state bodies leads to stalemate situations in a number of cases, when users of natural resources follow regulations of various agencies.”<sup>8</sup>

In 2011, new amendments eliminated the paragraph 13 of the Article 17 of the Environmental Code, which stated that the authorized body in the field of environmental protection “exercises control over activity of local executive bodies on conducting state environmental assessment with a right to recall and annul” it, in case of a violation of the environmental legislation.

A valid question arises: how can the authorized body conduct a unified state policy in the field of environmental protection, which is its duty, if controlling function were taken away from it? Obviously, the main goal of the above-mentioned amendments is to remove an obstacle that binds the “initiatives” of local executive bodies, to untie their hands.

On May 30, 2013, the Decree of the President of the Republic of Kazakhstan No.577 adopted the Concept of Transition of the Republic of Kazakhstan to the “Green Economy.” And in 2014, after numerous transformations, the authorized environmental protection body—the Ministry of Environmental Protection and Water Resources—was liquidated. In the light of the transition to an environmentally friendly economy, this step can not be explained. At the present time, the functions of the environmental protection ministry are distributed among dozens of agencies lead by the Ministry of Energy, which inherited the main authorities of the liquidated body.

The same year, the subparagraph 2 was removed from the paragraph 1 of the Article 47 “Objects of the state environmental assessment.” The removed subparagraph stipulated that «projects of state, sectoral, and regional programs with accompanying materials of environmental impact assessment are subject to mandatory state environmental assessment.”<sup>9</sup>

Thus, large-scale, costly projects that have a significant impact on the environment and public health have been excluded from the environmental assessment. The authors of the amendments were not embarrassed by the fact that this contradicts to the norms of the Article 7 of the Aarhus Convention and impedes its implementation by removing the public from the decision-making process. Nor were they embarrassed that there were contradictions with the paragraph 9 of Article 13 and paragraph 10 of the Article 14 of the Environmental Code. According to these provisions, individuals and public associations have the right to “participate in the process of preparing plans and programs related to the environment.”

In 2015, Article 167 was excluded from the Environmental Code. The paragraph 4 of the article stated that refusal to provide information, providing incomplete or inaccurate information can be appealed, including appeals through a court. The article was removed without any explanation in parallel with the adoption of the law “About Access to Information.” Though, a similar article 18 appeared in the latter. But what was the reason for another emasculation the Environmental Code again?

In 2016, the “wind of change” reached public hearings. The Environmental Code was introduced with the Article 57-2. It lists projects that are to be discussed at the hearings.

Article 57-2 contradicts to the paragraph 1 of the Article 36 and subparagraph 14 of the paragraph 1 of the Article 41 of the Environmental Code. According to the paragraph 1 of the Article 57-2, hearings are held on projects. According to paragraph 1 of the Article 36, “environmental impact assessment is mandatory for any types of economic and other activities,” in other words, including preparation stages of projects. According to the subparagraph 14, paragraph 1, Article 41, impact assessment documentation must include “materials on accounting of the public opinion, in a form of protocols containing conclusions on the results of public discussion of environmental aspects of the proposed activity.” How should designers work now? And how shall the public opinion be accounted at the earliest stage?

Environmental impact assessment provides for accounting of a wider range of factors of influence. Article 39, paragraph 1, of the Environmental Code specifies what types of impacts should be taken into account: direct, indirect, and cumulative. But after the introduced amendments they should, probably, be forgotten. The main thing is projects!

Relying on such “innovations” in the Environmental Code, on June 21, 2016, the Ministry of Energy made amendments to the “Rules for Conducting Public Hearings.”<sup>10</sup> “Public hearings in the form of a survey,” described in the second paragraph of the Rules, is a particularly “outstanding” invention. Now, public hearings can be reduced to a mere formality.

Among the few articles of the Environmental Code that remained unchanged or almost unchanged by the storm of amendments, there are two articles: about rights and responsibilities of natural persons (Article 13) and public associations (Article 14). In ten years, Article 13 was supplemented with one word “requests” (a very significant amendment)! And it took almost ten years to supplement the Article 14, paragraph 1, with a new subparagraph 1-1) based on a provision of the Aarhus Convention!<sup>11</sup> This amendment to the Environmental Code recognized the right of public associations to apply to a court in defense of rights, freedoms, and lawful interests of natural and legal persons, including an undefined number of persons. But for the sake of justice it should be noted that the absence of this

amendment did not prevent non-governmental organizations from applying to courts. Both, the old and the new Civil Procedural Codes provide for the rights of citizens and legal persons “to apply to a court for defense of violated or contested legal interests of others or an undefined number of persons.”<sup>12</sup>

Having acknowledged that the public has quite broad spectrum of rights, our legislators did not go further and did not create mechanisms for implementation of the rights. In particular, the above-mentioned articles of the Environmental Code recognize the right of the public “to participate in the decision making process by state bodies on matters related to the environment, in accordance with the procedure established by the legislation of the Republic of Kazakhstan.” It is only not clear, what is this order? The “Rules for Conducting Public Hearings” regulate only the organizational side of public participation, only reveal its opinion. But they do not answer the main question: how is public opinion taken into account in the decision making process? The sad experience of recent years shows that public opinion is almost ignored.

Finally, it is very significant that the Environmental Code is lacking articles that determine the powers of the president and parliamentarians in the field of nature protection. Although, there is the Committee on Ecology and Nature Management in the Majilis of the Parliament, and the Committee on Agrarian Issues, Nature Management, and Development of Rural Areas in the Senate of the Parliament.

As can be seen from the above described facts, the speed of manipulation with the Environmental Code is simply cosmic. And what is expected from project developers, businessmen, and ordinary Kazakhstanis, who are under this legal experiment?

Ten years passed since adoption of the Environmental Code, but again and again, we talk about the old unsolved problems: air pollution, cutting down trees, point construction development, pollution of rivers, unauthorized dumpsites, non-compliance with the procedures of sanitary protection zones of industrial enterprises, violation of the procedures of specially protected natural territories, ignoring public opinion, hiding environmental information, provision of false information by public authorities, and so on.

As before, the country lacks of environmental policy. Therefore, the environmental legislation changes depending on appetites of users of natural resources and, sometimes, under pressure of international institutions, which authority does not allow their demands to be completely ignored.

A lot more can be said about shortcomings of the Environmental Code, but we are afraid that it will take several dozen pages. And description of interpretations at their own will and violations of its norms will require thousands of sheets. Therefore, let us summarize.

The Environmental Code did not live up to its expectations. The average “life expectancy” of such laws in our country is 7-10 years. And if the tendency

of preparation of laws by kneeling to the needs of natural resources exploiters continues, then the Environmental Code is already “at its last gasp.” Who knows if it is going to be replaced by an even more contradictory and less effective legal act?

- 1 Environmental Code Is Planned to Be Adopted in the IV Quarter of 2006, <http://www.zakon.kz/70071-jekologicheskijj-kodeks-planiruetsja.html> (last visited January 9, 2017).
- 2 Paragraph-WWW, [http://online.zakon.kz/Document/?doc\\_id=30052363#pos=11;-270&sdoc\\_params=text%3D%25d0%25ad%25d0%25ba%25d0%25be%25d0%25bb%25d0%25be%25d0%25b3%25d0%25b8%25d1%2587%25d0%25b5%25d1%2581%25d0%25ba%25d0%25b8%25d0%25b9%2520%25d0%25ba%25d0%25be%25d0%25b4%25d0%25b5%25d0%25ba%25d1%2581%2520%25d0%25b4%25d0%25be%25d1%2581%25d1%258c%25d0%25b5%26mode%3Dindoc%26topic\\_id%3D30052363%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc\\_pos=0](http://online.zakon.kz/Document/?doc_id=30052363#pos=11;-270&sdoc_params=text%3D%25d0%25ad%25d0%25ba%25d0%25be%25d0%25bb%25d0%25be%25d0%25b3%25d0%25b8%25d1%2587%25d0%25b5%25d1%2581%25d0%25ba%25d0%25b8%25d0%25b9%2520%25d0%25ba%25d0%25be%25d0%25b4%25d0%25b5%25d0%25ba%25d1%2581%2520%25d0%25b4%25d0%25be%25d1%2581%25d1%258c%25d0%25b5%26mode%3Dindoc%26topic_id%3D30052363%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=0) (last visited January 9, 2017).
- 3 Forth National Report of the Republic of Kazakhstan on Biological Diversity. Ministry of Environmental Protection.—Astana, 2009, pp.37-38, <https://www.cbd.int/doc/world/kz/kz-nr-04-ru.pdf>.
- 4 Concept of Transition of the Republic of Kazakhstan to the “Green Economy.” Adopted by a Decree of the President of the Republic of Kazakhstan No.577 on May 30, 2013.
- 5 Approved by the Order of the President of the Republic of Kazakhstan No.1241 dated on December 3, 2003. Abolished by the Order of the President of the Republic of Kazakhstan No.47 dated on April 13, 2011.
- 6 See the dated of introduction of the amendments to the Environmental Code on the website: Paragraph-WWW, [http://online.zakon.kz/Document/?doc\\_id=30085593&show\\_di=1](http://online.zakon.kz/Document/?doc_id=30085593&show_di=1).
- 7 Akimat—a local executive organ of power.
- 8 Forth National Report of the Republic of Kazakhstan on Biological Diversity. Ministry of Environmental Protection.—Astana, 2009, p.39, <https://www.cbd.int/doc/world/kz/kz-nr-04-ru.pdf>.
- 9 By the Law of the Republic of Kazakhstan “On Introduction of Amendments to Some Legal Acts of the Republic of Kazakhstan on Bringing Them in Compliance with the System of State Planning of the Republic of Kazakhstan” dated on July 3, 2013, No.124-V, Article 1, paragraph 5.
- 10 Rules of Conducting Public Hearings (with changes and amendments as of June 21, 2016), [http://adilet.zan.kz/rus/docs/V070004687\\_#z6](http://adilet.zan.kz/rus/docs/V070004687_#z6).
- 11 The Article is amended by the subparagraph 1-1), in accordance with the law of the Republic of Kazakhstan No.491-V dated on April 8, 2016.
- 12 Civil Procedural Code of the Republic of Kazakhstan dated on October 31, 2015 (with changes and amendments as of April 18, 2017), Article 8, paragraph 2.  
Civil Procedural Code of the Republic of Kazakhstan dated on July 13, 1999, Article 8, paragraph 1.