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REFORM OF ECOLOGICAL LEGISLATION IN KAZAKHSTAN

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FOREWORD

The book before you examines the development of environmental law in Kazakhstan from the country's declaration of independence in 1991, through the fall of 1997. The book's prospective is unique: it provides the only existing comprehensive historic analysis of contemporary processes of development of environmental law in Kazakhstan. It is not, however, a formal legal critique of the environmental legislation in Kazakhstan. Rather it is an attempt to shed light on what environmental law and current legal institutions and processes mean for Kazakhstani NGOs and citizens. The prognosis is not an optimistic one.

Specifically, the book examines issues surrounding the development of three main environmental laws: the Law on Environmental Impact Assessment, the Law on Specially Protected Natural Territories, and the law, which, for better or for worse, provides the framework and foundation for all future environmental law in Kazakhstan: the Law on Environmental Protection. In his analysis of the development of these three laws, the author, Sergei Kuratov, identifies several general trends in environmental law-making in Kazakhstan: that the seductive potential profit from development of Kazakhstan's rich natural resource base has made the environmental law arena a hot bed of lobbying of economic interests of government ministries and officials and foreign and Kazakh businesses; that a lack of qualified legal specialists in the country and insufficient consultation in parliament mean that parliamentarians are often ill-informed on issues on which they are developing and passing laws; and that the relatively closed and anonymous legislative process has effectively kept the public and the NGO community out. The result of six years of these trends is Kazakhstan's current contradictory, patchwork approach to environmental law, which the author discusses at length in chapters three and four.

Although a year has passed since the book was completed, the issues for citizens and NGOs concerned with nature protection remain largely the same. Citizens and NGOs still do not have the right to demand compensation for damage done to the environment; they still cannot meaningfully participate in environmental impact assessments; and perhaps most importantly, they are still effectively shut out of the environmental law-making process by government and business interests. From this perspective, then, the book remains as timely and relevant as the day it was completed.

Megan Falvey

INTRODUCTION

Kazakhstan's non-governmental environmental organizations have taken part in solving the environmental problems of the Republic for over ten years. Experience accumulated over this period has shown their participation is vital, not only through direct action such as environmental education and aiding in the development of specially protected natural territories, but also in the development of legal, normative acts, and controls for implementing environmental protection legislation.

The political culture of our society, in comparison to that of developed Western countries is distinguished by a low degree of adherence to the law – a trait that to one degree or another is inherent in all strata of the population. Under conditions of state ownership of natural resources, disregard of the law was one of the reasons for intensive environmental destruction and pollution. After the breakup of the USSR in 1991 and the declarations of independence by the former Soviet republics, new factors worsened the situation. First, the former USSR legislation could not fully keep up with changing conditions; it could not provide an effective instrument for supporting law and order, and was unable to counteract the "criminalization of natural resource management". Second, economic collapse and governmental financial deficit led to weakened state control over environmental conditions and a decrease in environmental defense measures. Third, political and social-economic reforms led to decreased governmental participation in all spheres of social life, and in a number of instances, a total withdrawal from working to solve environmental or other social problems. This withdrawal resulted in a tendency towards loss of state responsibility for supporting basic order and for upholding the laws (1).

A similar situation has led to a legal paralysis that has become one of the most important obstacles to future democratic reforms in Kazahkstan and in other countries of the CIS. The environmental movement that was born in the final years of the USSR tries to oppose the tendency mentioned above, since it contributes to further environmental destruction and a decrease in quality of life. General experience in environmental protection work accumulated by NGOs over ten years has shown that the greatest resistance and least success has been met precisely in the area of maintaining the human right to a healthy environment and legal protection for the environment. Even efforts to resolve local issues,

such as illegal dumping, logging or housing construction have run up against bureaucratic red tape and illegal actions by entrepreneurs and government officials. Because of this, NGOs are now faced with a difficult choice: either to take an active stand in defense of the human right to a healthy environment, or to limit their activities areas to science, environmental education and training, and other efforts, where acute legal problems do not arise.

The need for an active NGO position on legal issues has been dictated by the situation that developed following the Rio-92+5 meeting where governments of participating countries demonstrated a lack of agreement with regard to implementing the Agenda for the 21st Century. As a result, the fate of the Agenda for the 21st Century will depend mainly on the active stances of various population groups and NGOs, and their ability to demand governmental implementation of the Rio-92 resolutions. This means that above all, they must demand adherence to national legislation and international requirements passed by their governments, while using environmental legislation as an instrument for defending the human right to a healthy environment.

On the other hand, the government of the Republic of Kazakhstan, aware of the need for improving the Republic's legislation, has begun carrying out reform. How is new legislation being developed? To what measure will it be able to contribute to improvement of the environmental situation in the Republic? How will the public and NGOs be able to use it to protect the human right to a healthy environment and to protect nature?

The main goal of the current work is to shed light on these questions. A historical-political position is used to examine the conditions under which reform is taking place, conceptual issues of developing legislation, and key aspects of Kazakhstan's legislation and environmental policy. An examination of particular legal questions is not a focus of this work, although some space is devoted to comparing the 1991 and 1997 versions of the law "On Environmental Protection".

A chronological approach is used to investigate the period after Kazakhstan's declaration of independence in 1991 (when the issue of environmental legislation reform began), through the end of 1997 (which was distinguished by the ratification of all the laws mentioned above. It goes without saying that legal reform isn't limited to the period under discussion and has not been completed with the passage of the aforementioned laws. Still, in light of the fact that the law "On Environmental Protection" is the basis for a system of environmental legislation, this analysis focuses primarily on this law.

1. See: Yablokov A.B. Zelenoe dvizhenie v Rossii: problemy i putirazvitiia. (Tezisy dlia obsuzhdeniia v xode podgotovki Konferentsii SoES v Karagande, sentiabr' 1997 goda). Avgust 1997; Holmes S. When Less State Means Less Freedom // Transitions. - 1997. – Vol.4. No.4, September.

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CHAPTER 1

THE ECONOMIC AND SOCIAL-ENVIRONMENTAL SITUATION

Kazakhstan's December 1991 declaration of autonomy, the beginning of democratic reforms and the move toward a market economy led to positive as well as negative changes. These changes in turn had an impact on the economic-social-environmental situation in Kazakhstan.

One can sort out groups of factors that determined the economic-social-environmental situation in Kazakhstan and that have a primary significance for analyzing environmental policy and legislative development. These are: 1) the economic and environmental legacy of the USSR, 2) the orientation of an economic policy toward increased natural resource exploitation, 3) economic collapse, 4) the domination of economic over environmental priorities, 5) a change in the population's attitude toward environmental problems, 6) the condition of state environmental protection agencies, and 7) an inadequate legal foundation to regulate the interaction between society and nature under new political and economic conditions.

1. The Legacy of the USSR

The positive effects of declaring autonomy and social democratization were, above all, an end to nuclear testing in the Republic and Kazakhstan's receipt of nuclear-free status. Independence opened broad opportunities for developing economic ties with countries with modern environmental technologies, a developed system of environmental legislation, and a high quality of life. International cooperation with Kazakhstan began developing in the environmental field.

The economic structure of the Republic was formed during the Soviet years. An economic system tightly linked to the Soviet economy and especially with Russia presented a serious obstacle along the path of developing these beginning steps. The economy was primarily oriented toward mining the mineral wealth and production of agricultural products. This orientation towards raw resource extraction had a strong anthropogenic impact on the environment, which was increased by nuclear polygons, the space program launch pads and numerous military sites. One of the worst environmental situations among the former Soviet

republics existed in Kazakhstan, as a result of heavy pollution and environmental destruction at the time independence was declared (1). The Kazakh territory underwent intensive transformation during the Soviet period. At the start of the 1990s, land used for farming and other needs totaled 83% of the country's landmass, as opposed to 45% in the USA and 8% in Canada. At the same time the amount of land covered by forests totaled just 3% of the total land mass (2).

The issue of the economic orientation of an independent Kazakhstan arose from the first days of independence. On one hand, the breakup of the USSR signified for Kazakhstan the destruction of national economic ties and an end to centralized investment. On the other hand, there was the elusive possibility of funneling cash flow from natural resource use (in particular, mined resources) into the Republic's budget. Proceeding from the old stereotype that Kazakhstan is rich in natural resources, attention is rarely focused on the fact that Kazakhstan is far from having sufficient quantities of all resources or being able to use all resources to an equal degree. Thus, for example, the "general number of reserves of ferrous and non-ferrous metals in Kazakhstan is large", but "lack quality". Only 4 or 5 of 54 deposits can meet "the demands of any investor" (apparently, they have in mind the most promising deposits - S.K.) (3).

The end of the unified environmental protection policy of the Communist Party and the Government of the Soviet Union had negative impacts. In spite of all its shortcomings however, the Soviet policy, to a certain degree, held in check processes of environmental destruction by local commercial entities and ruling agents. It also supported certain sanitary-hygienic norms of environmental quality and maintained a unified policy for normalizing and monitoring environmental quality (4).

2. The Increased Raw Material Orientation

During the first phase of economic reforms, from 1992, to around the middle of 1994, which might be called the "economic liberalization phase", leaders of independent Kazakhstan headed by President N. Nazarbaev, relied on rich natural resources and a convenient geo-political location. Using the profits of international cooperation, they set out to overcome the raw material based focus of the country's economy (5). They proposed laying foundations for a market economy, creating a legal foundation for a free market, carrying out privatization, and implementing financial stabilization – i.e., curtailing the ruble's rapid inflation and changing to a national currency (this change was implemented in November 1993).

Beginning in 1991, the fall in production was especially rapid. The rapid decline was due to the economic legacy of the USSR, the preservation of a bureaucratic power structure that traded party posts for positions in governmental departments and commercial structures, and numerous mistakes during economic liberalization that resulted from doubt and lack of desire on the bureaucracy's side to move toward truly democratic forms of governing (6). In 1992, the Gross Domestic Product was 75% of the 1990 GDP; in 1993, 64%; in 1994, 48%; and in 1995, 42% (7). "The monetary policy of price liberalization could only have occasioned hyperinflation", with a growth rate of 3,061% in 1992, and 2,265% in 1993 (8).

One especially alarming symptom for the government and economists was the fact that the decrease in raw materials production industries (the so-called base industries) was insignificant. This signified a continuing production dislocation in the manufacturing sector and even greater growth in the Republic's economy with regard to development of the raw materials sector (9). The critical character of the economic situation and the lack of financial means forced the government to focus more attention on the issues of financial stability, which became the basic focus of the second phase of economic reforms beginning in the middle of 1994 (10). Under these conditions, the government was compelled to give preference to developing base industries, which were most promising at the time.

Financial stabilization should have opened the way to greater opportunities for private enterprise, improved the climate of investment in the country and attracted foreign capital. Kazakh officials strove to bring about the latter, even to the point of "ignoring their own laws" (11). The government began to stress increased production of export goods. By way of development alternatives, the economic models of the United Arab Emirates and Chile were proposed. This re-orientation was ideologically formulated in the official presentations of government leaders. "And why is a raw materials republic a bad thing? The rest of the world thinks just the opposite", Deputy Prime Minister V. Mette declared in 1995 (12).

In the second stage of economic reforms, the government succeeded in improving macroeconomics indexes, slowing the drop in production, achieving a production increase in base industries and essentially lowering the rate of inflation.

INFLATION RATE, INCOME AND UNEMPLOYMENT

	1991	1992	1993	1994	1995	1996
Inflation Rate %*	--	3,060.8	2,265.0	1,258.3	160.3	128.7
Gross Domestic Product per capita in US dollars*	4,081	3,612	3,214	2,442	2,271	2,296
Registered Unemployed, thousands of people	--	--	40.5**	70.0**	139.5**	282.4***

Sources:

* Shokamanov Iu., Baimoldaeva K. "Statistika rynochnoi economiki". – Almaty, 1997. – PP. 53, 55.

The table illustrates the authors' conclusion that one of the reasons for a decreased inflation rate was the "limited earning ability of the greater part of the population" and "maximally high price levels for socially important goods". ibid., p. 55.

** "Statisticheskii ezhegodnik Kazakhstan". – Almaty, 1996. – P.43.

*** "Kratkii statisticheskii ezhegodnik Kazakhstana". – Almaty, 1997. – P.27.

Mention should also be made of the recognition of private land ownership in the Constitution of 1995 and the Edict "On Land" of 1995, which is supposed to facilitate positive changes in the development of agriculture and use of land resources.

But, in spite of a certain improvement in macroeconomics indexes for 1997 – in particular, a significant reduction in the inflation rate – the government's policy has been unable to stabilize the social-economic situation as a whole. The material status of broad masses of the population continues to worsen. Social infrastructure institutes, medical services, pensions and education are especially struggling.

Experts from the United Nations Development Program also support this view. "It must be noted that exclusively impacting macroeconomics parameters ... under conditions of the large-scale and multi-faceted economy of Kazakhstan, is really not adequate for meaningful economic management" (13). Specialists from the European Specialist Bureau also note that "if the government limits itself only to macroeconomics issues,

then most certainly it will not solve the problem of industrial restructuring in Kazakhstan (as is the case in any other country)" (14). Another extreme of the State's economic policy is blind faith in the all powerful market mechanism, which has been expressed in a sharp reduction in the regulatory role of the State in the economy and in the social sphere, which Western specialists have also begun to point out (15). The results of this blind faith have turned out to be threatening and even the tendency toward measured economic stabilization noted above has yet been unable to counteract the worsening material status of broad masses of the population.

In 1997, because of the reasons mentioned above, a reverse tendency took shape – a move toward increased State regulation of economic policy through better use of legal mechanisms, anti-monopoly regulation, fiscal and monetary policy and implementation of reforms on a micro level (16). The negative effect of bureaucracy and corruption on the economic situation was officially recognized. In the opinion of experts, this effect is a "fundamentally real and inescapable factor" that impacts the economic situation (17).

Economic decline has a two-fold impact on the environment-both positive and negative. The positive effect on the environment consists of reductions in natural resource consumption, amounts of combustible fuel, tonnage of waste and a decreased burden on grasslands associated with a reduction in the number of livestock, etc. (18).

The negative side to economic collapse in Kazakhstan have been: worn out equipment (which leads to a loss of valuable resources and higher levels of pollution); an increase in an uncontrolled, spontaneous burden on natural resources on the part of the poor; a shortage of financial means to implement environmental protection measures and for Kazakhstan to fulfill international legal obligations in the area of the environment. The center's weakened role has led to a strengthening of provincial authorities and to chaos in natural resources use.

It should be noted that the environmental situation is not truly reflected in official statistics because of continued use of the traditional system for national accounting. The number of forms for official reporting on environmental protection is being reduced. If sustainable development indexes were considered in accordance with the recommendations of the UN Commission for Sustainable Development, then we would have a much more realistic picture. Considering that there is a 2 -10% GNP loss in the countries of Eastern Europe and the Commonwealth of Independent States because of the unfavorable environmental situation, one could

reliably assert that the real GNP of Kazakhstan (allowing for the severe environmental situation in the Republic) is less than official figures indicate and that on the whole, the economic situation could be characterized as even less stable.

This view is supported by an official publication of the Center for a National Plan of Action for Environmental Protection, according to which, "directly or indirectly the reason for 20-30% of Kazakhstan's social-economic problems is environmental degradation". The total annual economic loss in the Republic from "environmental degradation makes up 153 billion tenge" (1 USD = 75.5 Tenge in mid-1997) with a GDP of 1,415.8 billion tenge in 1995 (19). However, it should be noted that certain specialists consider such figures unfounded, pointing out that the increased measures of loss caused by pollution and destruction and exhaustion of natural resources allows the establishment to hide its own mistakes with regard to social and economic policy.

Because of the increased raw materials orientation of economic policy of the State, currently "approximately 80% of the GDP falls under the mineral-raw material complex" (20). In comparison with the former Kazakh Socialist Republic, a fundamental change is occurring in the structure of industrial manufacturing, with a growth in the mining industry's share of the general volume of production and a decrease in the remaining industries (21).

3. The Dominance of Economic Priorities

Proposed development scenarios have regarded and still regard the republic's natural resources (first and foremost, mineral resources – i.e., non-renewable resources) as the chief strong point for development, while indirectly acknowledging that the Republic has available other potential in limited quantity. The official report of the UN Program for Development for 1995 also underscores that Kazakhstan has potential in the form of "a vast territory and a wealth of natural resources", although somewhat exaggerating the Republic's human potential (22). But the report for 1996 notes the obvious negative tendencies in the area of human development of the Republic due to the economic situation, mass migration, a decline in the quality of education and other factors (23). The 1997 report delivers an even more pessimistic prognosis, noting that the continuation of negative tendencies, especially in the area of human development, "could in the immediate future lead Kazakhstan from the group of countries with average human development potential into the group of underdeveloped countries" (24).

"The full dependence of Kazakhstan and Turkmenistan on the development of raw materials is well acknowledged by the ruling elite. Both countries put forth ambitious programs for increasing mining and exporting oil and gas" (25). In other words, economic program developers have silently admitted that there is currently no possibility for a significant reduction in the anthropogenic load on the environment. At best, it is possible to partially compensate for environmental damage by fixing fair market prices for raw materials, thus following the path of weak sustainability, which is one of "gradual introduction of paying for raw material use and thus providing an economic stimulus for environmental protection" (26).

An understanding of the Republic's heavy economic dependence on raw material resources meanwhile doesn't keep officials from partitioning off and even placing at odds the development of raw material sectors of the economy and environmental problems. Thus, for instance, the list of strategic resources (note that the Agency for Controlling Strategic Resources was created to monitor and assess use of such resources) does not include land, biological, or water resources. On the other hand, resources traditionally viewed as the most important in the former USSR– oil and gas deposits, as well as precious, ferrous, non-ferrous and radioactive metals – are included (27).

An unexplainable situation exists: the Ministry of the Environment and Bioresources exercises control over bioresources. World practice shows that bioresources have primary strategic significance, but from the point of view that holds favor in the Kazakhstan Agency for Controlling Strategic Resources, they have no strategic significance. At the same time control over the use of cultivated grain falls under the jurisdiction of this same Agency, although the latter are bioresources and should come under the control of the Ministry of the Environment and Bioresources. Moreover, the Agency has selective, and to be precise, economic control over the stated resources, as though not noting that the use of these resources creates a number of difficult problems in environmental protection: waste management, land recultivation, and so on (28). In the opinion of E. Utembaev, chair of the Agency for Strategic Planning, "between ecologists and economists total incomprehension rules". The means needed for resolving environmental problems are viewed by the latter as resources that are being diverted from the economy and weakening economic growth (29).

The government's position appears quite contradictory. On the one hand, there is a clear attempt to come out of economic crisis by increasing

natural resource exploitation. On the other hand, the intention has been declared to move toward environmental improvement. A balance between priority development factors continues to be the core of official economic policy. The situation is aggravated by an approach to development similar to that of the Soviet Union, which weighs especially heavy on Kazakhstan's fragile environment. The "environment of Kazakhstan has a low potential for resistance to gaseous, liquid and solid waste pollution. The arid climate of half the country's land mass slows biological renewal while worsening the regeneration in the plant and animal worlds because of solar radiation in the summer and severe winters" (30).

In addition, it should be noted that the presence of resources does not guarantee that the Republic will be able to repeat the experience of the Arab Emirates. And even in the event of successful development, there is a danger of repeating the Chilean situation (where economic flowering was paid for by heavy environmental pollution) and the threat of a disproportionate lack of growth in the non-raw material sectors of the economy (31).

An inconsistent economic policy promotes environmental decline. Growing pollution and environmental destruction is becoming a source of environmental danger in the Republic (32). The most serious factors of environmental danger are the environmental and economic legacy of the USSR as an industrially developed country. At present, the greatest threat is presented by widespread industrial waste pollution, desertification, topsoil destruction because of irresponsible cultivation methods and unsystematic pasturing, wasted water resources and water pollution, loss of forests, loss of biodiversity, and radioactive pollution. "Neglect of environmental protection in favor of industry ... has taken an acute toll on human health" and is the cause of numerous illnesses (33).

4. The Population's Attitude Towards Environmental Problems

The most important factor in successful implementation of an environmental policy and legislation on the environment is the attitude of basic population groups towards environmental problems and their participation in solving those problems. A great deal of attention is devoted to this issue in the documents of the Rio De Janeiro conference, since realistic fulfillment of the Rio concepts depends mainly on the position of a broad mass of the population.

The breakup of the USSR led to changes in the right to ownership of natural resources, types of access to natural resources and manner of natural resource distribution. Recognition of private property became

one of the main factors in the clash of interests of various social strata in the struggle for land re-allotment and control of other natural resources. Mass privatization of land and state enterprises caused a decline in the state monopoly on land and mining (34). The centralized apparatus for acquiring and distributing resources collapsed, which dealt an especially painful blow to regions that imported resources from within the republic, remote regions that had to expend a great deal to acquire resources, and regions and population groups with low-income levels. Price liberalization changed the system of price-fixing for resources. In conjunction with this, new types of natural resource use began to take shape, including uncontrolled and illegal use.

A change is taking place in Kazakhstan in the attitude of various social groups towards types of natural resource use, and on the whole, towards environmental problems. In order to draw a more or less objective picture of the process, one might use the familiar division of the population in to 5 groups along income lines (with 20% of the population in each group): the poorest layers of the population, the poor, the middle-income layer, the rich and the very rich, which on the whole reflects the real differentiation of society in Kazakhstan (35). The ratio of incomes between the very poorest and very richest layers of the population "varies by a factor of 11 to 30" (36).

The rural population and the poorest strata of city residents fall into the first two groups. The total number of these groups can be determined by relying on data from the UN Program for Development, according to which 84% of rural and 44% of urban populations were at the poverty line in 1995, or 64% of the general population, if we take as the threshold for poverty a minimum income of 1800 tenge per person per month (37). World experience shows that the poorest strata, when left without a financial stake in family income or generally without a permanent source of subsistence, are forced to intensify activities that effect the environment for basic survival.

The felling of forests and forest plantations (including some of the most valuable ones) for firewood to heat and cook has become a widespread practice. In the Pavlodarsk oblast, in the Irtysh flood-lands "villagers are cutting down forests without logging tickets due to a lack of fuel and financial means "(38). "An increase can be found in the amount of forest destruction, (including illegal logging), hay-mowing and cattle pasturing, and preparation of medicinal plants and other secondary forest products" (39). Illegal logging of forest conservation belts can be found even in the immediate vicinity of Almaty, Zhambyl and other cities.

One way or another the local population finds itself drawn into illegal hunting, fishing, capturing and trading rare species of birds and animals, and into the illegal collection of useful and medicinal plant life. During the third quarter of 1996, 2,512 violations of fish conservation laws were registered. Three people employeed by the Ministry of Internal Affairs, 117 fishermen from various fishing organizations and 2,392 private citizens were called to account (40).

An increase in livestock on private farms and in the amount of land handed over to private farmers, as well as an increase in the number of refugees and migrants has lead to an increase in cases of unauthorized seizure of state land and pastures, even in territories that have been included until the year 2005 in the Framework for Development and Distribution of Areas of the Nature-Reserve Fund of Kazakhstan (41). Land privatization without a clear legal system is becoming a serious limitation in access to land resources for the poor.

The deterioration of the sanitary-hygienic condition of the environment in residential areas occupied mainly by the poor (declining access to fresh water, air pollution, increased population density in cities, municipal waste pollution) is becoming a very serious problem. One can assert that the sanitary-hygienic conditions of residential areas in a number of regions in the republic, including Almaty, have grown worse than they were during Soviet times (42). In connection with this, UNICEF has rolled out a program for helping a number of regions in the Republic to develop a water supply system (43). Poverty is even inciting theft of valuable materials from the radioactively polluted territory of the Semipalatinsk Polygon (44).

The decline of the environmental situation on the whole and of sanitary-hygienic conditions in particular cannot help but impact population health. Specialists are seeing a growth in illnesses linked to poor water quality and environmental pollution. In addition, they note that the indigenous population is subject to a greater degree of morbidity than other population groups (45).

The poorest strata of the population are compelled to consume products of low environmental quality that are grown in polluted soil and along the sides of roads. Environmentally pure production is hard to achieve because of general price increases. The process of migration of the indigenous population from regions of environmental disasters, in particular, from the Aral Sea area, is intensifying (46). Access to natural recreational resources has become limited for the poor and poorest population layers.

Still, it should be noted that a number of these types of impacts on the environment could not have occurred on such a large scale if officials were held fully accountable for their activities and without partial complicity on the part of local governing agents, and tolerance on the part of those responsible for environmental protection.

Less apparent are the changes in attitudes and forms of interaction with the environment of the middle classes, which includes farmers, laborers and white collar workers in cities. This population group with a middle income level, which makes up approximately 15-20% of Kazakhstan's population, is shrinking because of an increase in the "gap in the social positions of basic social strata" (47). The small size of the "middle class layer" is officially acknowledged (48).

Increased prices for consumer resources and the introduction of paying for resources that were previously supplied for free or a low cost, are making access to natural resources that are important for living more difficult. Sanitary conditions in cities are worsening because of an accumulation of municipal and industrial wastes, growth in automobile parking lots in a number of cities, population influx to large cities from rural areas and from regions of environmental disaster, and the extremely unfavorable situation in small and mid-sized cities that depend on two or three enterprises for their existence. Pollution results in increased illnesses and morbidity in regions where laborers and white collar workers live at the average income level, as in the city of Almaty – in the "Ainaulak" and "Dorozhnik" neighborhoods, and in old neighborhoods of the city; the same is true of other cities. "It has been concluded that environmental factors account for 20 to 40% of the basic factors that determine health and are linked to 77% of illnesses, over half the causes of death, and 57% of the causes of malformed development" (49).

It should also be noted that the general growth in prices has made access to recreational resources more difficult. The introduction of increased tariffs on transportation, taxes on real estate, price increases for building materials, a decline in the purchasing power of the population, etc., have led to sharp cost increases for maintaining children's health institutions and sanatoriums. Owners of many of these institutions are currently simply unable to find patrons to pay for their services, and thus the health institutions are unattended, leaving them to ruin.

A survey by the Republic's Center for Studying Social Opinion carried out in rural regions of the Taldykorgansk oblast among the self-employed and those wishing to start their own business has shown that of the thirteen most severe social-economic and environmental problems, those surveyed

gave the highest priority to interruptions in electricity, gas and warm water; second priority was given to food; third to prices for municipal services. Environmental problems were relegated to ninth place and poor living conditions to twentieth (50). On the hole, a similar picture is presented by the attitude toward environmental problems of not only the rural population, but also urban dwellers. Thus in spite of a series of positive shifts in the field of environmental education, propaganda, scientific knowledge and the creation of national parks and preserves, general conditions in Kazakhstan have not yet brought about environmentalization of behavior and thinking of the aforementioned population groups.

Highly placed officials, large-scale local businessmen and high-ranking executives make up around 2-3% of Kazakhstan's population and can be assigned to the wealthy and very wealthy population groups. "10% of the most secure layers of the population have incomes that exceed the least secure by 11 times" (51). These figures give an approximate picture of the numbers of the population group under discussion.

The bureaucratic apparatus (meaning mainly the bureaucrat-managers) has received even broader access to use natural resources to their own interests. Numerous factors underscore that the weakened system of centralized management has opened the door to use and distribution of local resources, including particularly valuable biological resources (52).

Furthermore, there is a persistent tendency towards illegally placing funds received from polluters into municipal budgets rather than into environmental defense funds (53). Oblast and local governments, citing an absence of money for paying out pensions and wages, often use pollution fees at their own discretion (54).

According to the Presidential Edict "On the Republic's Budget for 1996", 75% of finances which the environmental defense fund receives should go to oblast branches of the Ministry for Environmental and Bioresources. However, experience shows that the financial means of the environmental defense fund "remain unprotected from arbitrary use" (55). An analysis of the funds which were actually received by the environmental defense fund in 1996 shows that, in total for the Republic, 1,573,202.58 thousand tenge (or 87.1%) were transferred to local budgets and 12.98% was transferred to the Republic's budget. Only 545,187.79 thousand tenge (or 34.7%) were transferred to the account of the local (oblast) Environmental and Bioresources Management Services. The largest transfer to local (oblast) Environmental and Bioresources Management

Services was in the Semipalatinsk oblast at 74.3% and the smallest transfers were made in Pavlodar (5.1%) and in Almaty (8.0%) or 2,500.0 thousand tenge (56).

In addition, local authorities frequently promote the creation of pseudo-environmental enterprises that receive orders to produce one type of product or another, create project plans, and provide consulting services (57). Pseudo-environmental organizations that are confident that they are under the defense of bureaucrats have also appeared (58).

Mass disregard of environmental norms and standards is wide spread. This is explained by the near total lack of retribution for such actions; in the best case the guilty bear some responsibility under the law. Analysis of land use violations shows that in the majority of cases, the violations are of "environmental land-use requirements (44.0% of all violations that come to light) and ... requirements concerning trash disposal (36.4%)" (59).

Thus, increased decentralization, together with positive aspects, leads to a strong negative element that contributes to environmental damage and pollution, and to the depletion of natural resources.

The position of local entrepreneurs does not essentially differ from that of bureaucrats. They view the environment as a source of wealth and as a result do not miss opportunities to develop a close relationship with the bureaucratic apparatus. Environmental damage, even the kind that is very evident, such as health damage, is not taken into account. As examples, one might look at the mining in Oi-Karagai of brown coal that has a high radioactive content and was illegal for use during the Soviet period (60) or the Charyn canyon situation, where unorganized commercial tourism is developing. There are numerous examples of the destruction and covering of fertile topsoil, creation of unapproved dumps and soil pollution that serve as good illustrations of the weak stage of development of land use laws in Kazakhstan. In addition, there is also illegal use of other resources; for instance, fertile and highly productive land tracts of former state farms are being taken over for building prestigious single-family homes. The construction is often carried out in gross violations of building and sanitary norms, logging of reforestation sites, etc. Cases of any positive impact are extremely rare, since the general tendency is to use natural resources to accumulate capital.

Besides the Kazakhstan population groups mentioned earlier, one must also consider the large foreign investors who have become active consumers of natural resources in Kazakhstan. "The most attractive and promising avenue for foreign investors is the gas-oil complex, and ferrous and

non-ferrous metallurgy" (61). According to official statistics for 1996, around 75% of foreign capital investment was made in the mining industry (62). Investors expect to receive a profit in 2-3 years, which is supported by a high degree of profitability – from 30 to 45% in the indicated industries (63).

On the one hand, foreign businessmen are interested in creating a normal legal framework for business development, including a legal basis for natural resource use. On the other hand, many environmental requirements are weakly reflected in treaty requirements with foreign partners, which frequently allows them to ignore the newest available technologies on legal grounds, thereby saving money on the environment (64).

5. The Status of Governmental Environmental Protection Agencies

The state of governmental environmental protection agencies is determined by the general social-economic situation and agency reorganization.

The Ministry for the Environment and Bioresources (MEB), which is "the central executive organ for state control of the environment and natural resource use" is allowed broad jurisdiction in environmental inspection, but has the exact same status as other ministries in the Republic; the MEB can inspect, but not enforce. This is in spite of the suggestion of specialists and the public that the MEB should receive special status because of the extreme importance of environmental problems for Kazakhstan. The special status suggestion has been rejected, although it has been pointed out that decisions from the MEB "are required for the functioning of all ministries" (65). The current status significantly reduces the effectiveness of the MEB's activities and permits influential ministries, departments, local authorities and private businessmen to ignore its decisions and requirements to a significant degree (66).

Decreased state funding for environmental protection and rational use of natural resources aggravates the situation of environmental protection agencies. Using January 1, 1991, tenge values (in millions of tenge), state funding has been: 155.9 for 1985, 322.5 for 1990, 146.3 for 1994 and 104.1 for 1995 (67). Another negative point is the fact that the extra-budgetary fund for environmental protection for use by the MEB was transformed by governmental decree "into a source for state budgetary income" and is used at random by local authorities (68).

The shortage of funding for environmental protection and restoration projects has greatly reduced the capacity not only of the MEB, but also of other ministries. For example, there was a decrease in reforestation sites from 70 thousand hectares in 1992 to 25.2 thousand in 1995. By

1995, seedling preparation for reforestation had decreased by 5 times in comparison with 1990. Because of a lack of funding for fire protection measures, the number of forest fires increased, as well as the amount of burnt territory (69).

A shortage of finances leads to a lack of personnel, equipment deficiencies and other negative conditions (70). Administrations of specially protected nature territories are experiencing great difficulties and have been forced at times to ask the MEB for permission to partially use their territories and resources to keep their organizations functioning (71). Because of the numerous administrative rearrangements, specially protected nature territories have wound up under the jurisdiction of the Forestry Committee. That committee itself is part of the Agricultural Ministry – one of the chief commercial entities whose interests often collide with a policy of creating large specially protected territories. In the opinion of many specialists, this conflict will hardly help such territories function successfully (72).

In conclusion, there are fundamental obstacles along the path of successfully establishing functioning environmental protection agencies: a lack of experience in solving environmental problems under market conditions; on-going structural reorganization of environmental protection organs; a lack of specialists and reshuffling of permanent personnel; insufficient financing; underdeveloped market mechanisms suitable for use in terms of environmental protection and rational use of natural resources; unclear distribution of authority with regard to environmental protection between various government branches; and an unjustifiably high level of authority of local governing organs over the disposal of natural resources.

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CHAPTER 2

CONCEPTUAL AND PROCEDURAL ASPECTS OF LEGISLATIVE REFORM

The rapid social-economic changes described earlier required legal reforms on the interaction between the environment and society. One of the first official opinions on the inadequacy of environmental protection legislation and the Law of the Kazakh SSR on environmental protection in the Kazakh SSR of 1991 was published in the plan for a "National Program of Rational Natural Resource Use", prepared by the MEB in 1993 (1). In 1994, in the "Environmental Policy" section of the "Program of Governmental Activity for Deepening Reform and for a Way Out of the Economic Crisis" there was official announcement of the government's intention to introduce a new version of the law "On Environmental Protection in the Republic of Kazakhstan" for scrutiny by the Supreme Soviet (the highest organ of State Authority in Kazakhstan SSR and in the early years of independence) in 1994.

In 1995, the new Constitution of the Republic of Kazakhstan was ratified. In the opinion of the MEB, the new constitution "set new legal grounds for the country's legislative development. The fundamental economic relationship of natural resource ownership was recognized...A system of legislative, executive and judicial organs is being built on the principle of division of authority" (2).

1. The Constitutional Basis of the New Legislation

The fundamental law of the Republic of Kazakhstan, the Constitution of 1995, contains a series of contradictory statements relating to the interaction between nature and society. There are a number of reasons for this: the processes listed earlier that are taking place in society, a lack of experience in the area of environmental legislation, an acute lack of specialists in the given field and the dominant anthropocentric approach to issues of interaction between nature and society.

The first Constitution of Independent Kazakhstan passed January 28, 1993, recognized in Article 26, the right of citizens "to an environment that is favorable for living and human health". The Second Constitution passed August 30, 1995, declares in Article 31: "The Government sets as a goal an environment that is favorable for living and human health". Both of these statements focus on one (albeit very important) aspect of

the interaction between society and nature - protection of the environment. The second statement can be taken in two ways. First, the state purposely safeguards the entire environment; second, the state is not worried about the environment on the whole, but protects that part of it which has not suffered from destructive anthropogenic impact.

The 1995 Constitution does not mention the right of citizens to "to an environment that is favorable for living and human health", as was recognized by the 1993 Constitution. It actually negates the principle of "universality and indivisibility of human rights", voiced by the 1993 Vienna Declaration and Program of Action, while laying the ground for discord when developing environmental legislation. Article 38 of the 1995 Constitution obligates citizens "to protect nature and treat natural wealth carefully", thereby significantly broadening the duty of citizens in comparison with the duties of the State, if Article 31 of the 1995 Constitution is explained according the second definition given above.

An important point of the 1995 Constitution, especially in light of expanding international cooperation, is the acknowledgment of the priority of international documents signed by the Republic of Kazakhstan. Article 4 states that "International treaties ratified by the Republic have priority over the Republic's own laws and apply directly, without exception, when it follows from an international treaty that a new law must be issued for the treaty's implementation".

Finally, Article 6 sets regulations for access to natural resources and the right of resource ownership. "Land and its mineral wealth, water, plant and animal worlds and other natural resources are State property"– which means that land can also be private property (Article 6.3). Two basic types of resource access are actually acknowledged: in the first, for all citizens there is an equal right to access to resources that meet their living requirements; in the second – the available amount of consumer goods (such as land) can depend on individual prosperity, or an individual's ability to buy goods.

2. The Need for New Legislation

It was the opinion of the MEB that the Law of 1991, "essentially has grown old and can no longer play a role in the area under discussion" (3). This created a need for developing a new main environmental law to replace the 1991 "Law on Protecting the Environment of Kazakh SSR" which was in effect at that time. Still, a number of specialists felt that this 1991 Law did not need to be abolished. It would have been better to add changes and corrections, since on the whole the law fully fit the changing

situation. The need to rework a specific portion of legislation was more apparent and did not cause dissent, since specific portions of the existing legislation were developed poorly and incompletely. The opportunity to strengthen new legal norms by introducing amendments to the existing 1991 Law was also recognized by the MEB (4), but MEB considered that creating a new version of the law was preferable, because the 1991 Law:

1) contradicted in many of its articles (from 83 articles of the 1991 Law, 58 or 69.9%) laws and legislative acts ratified in recent years;
2) concentrated on the issue of natural resource use and was oriented toward regulating the interaction between society and the environment and, moreover, did not consider the entire body of issues linked with an individual's environment;
3) did not consider the need for "introducing complex environmental monitoring";
4) did not clearly enough define the authority and functions of state management agents where the environment is concerned;
5) did not clearly define environmental priorities and relied on outdated ideas of natural resource use and environmental protection which inhibited commercial activity;
6) did not clearly define approaches for resolving issues of natural resource use in "anthropogenically ruined territories" (which inhibits investment);
7) did not provide clear criteria for determining environmental disaster zones (which makes it difficult to offer the populous any social defense);
8) required additions in order to improve the legal foundation for international cooperation (5).

According a round table speech "The Problems of Developing an Environmental Culture for the State and the People of Kazakhstan: Legal Aspects" given by the Deputy Minister of the Environment and Bioresources Kanat Saktangovich Baishev on April 5, 1996, what was needed was "harmonization of environmental legislation of the Republic of Kazakhstan with the legislation of the main industrially developed countries of Europe and the US on the basis of principles of environmental protection recognized by the world community" and a convergence of legislation with that of the countries of the CIS (6).

There were other shortcomings of the 1991 Law which also gave rise to serious debates at the time of its ratification in 1991. The law did not set a clear mechanism for developing a national environmental policy. Nor did it spell out the responsibilities of all structures which ratified, coordinated and executed the resolution – from planners to ministry specialists and also officials of the executive branches. The 1991 Law was

poorly coordinated with other laws concerning regulatory relationships in the environmental area. The law presented limited opportunities for society's participation in the ratification of environmentally significant resolutions and in the defense of the human right to a healthy environment. Finally, the 1991 Law was passed for populist reasons, under pressure from the heightened activity of broad masses of the population – like the other laws of that period.

Positive sides of the 1991 Law were not given consideration by the MEB; even those positive aspects noted in the amendments to the new legislation made by a consultant of the Harvard Institute for International Development S. Dreunovski. In analyzing the new legislation, Dreunovski compared it to the 1991 Law and noted that the 1991 Law included a number of sound environmental principles: environmental impact assessment, the principle of openness in the passage of resolutions, environmental fines, the principle of compensation for environmental damage inflicted and other principles (7).

Nevertheless, the MEB felt that creation of a new law would be more expedient than amending the existing one.

3. The Main Active Parties

In spite of the critical status of environmental problems, the majority of the population does not feel an acute need to create new legislation in the environmental area, although such a need can be seen during the development and ratification of a series of other laws that find great resonance among the populous and are broadly covered in the mass media. The introduction of various environmental payments causes, at times, even an opposite reaction and is viewed as excessive taxation. This reflects, on the one hand, a degree of awareness of environmental problems and the link between a healthy environment and quality of life, and, on the other hand, the level of political activity of the masses and the degree to which they trust legal system. Once again, the norm is supported: the lower the per-capita income is in the country, the less desire there is among the masses to take part in environmental activities. Increasing differentiation in social class in the Republic results in "problems of differing interests in legislation" of different social groups, which "leads to severely negative social consequences" (8).

However, one may delineate several groups showing a clear interest in developing laws or separate articles as reflected in debates centering around laws and their separate articles.

1. **Officials of various ministries and institutes.** Their interest was especially clearly manifested in the debates on the draft law "On Specially Protected Natural Territories" over the ministerial division of specially protected territories (9). (There exists a temptation to reap illegal benifit by gaining administrative control over specific natural territories).
2. **Foreign investors.** Their interest is due to the capital investment they put into natural resource extraction industries. Foreign firms often seek to influence new legislation in the environment in order to create legal and market conditions which will be favorable to natural resource extraction. At the same time, they often attempt to project an environmentally friendly image. For example, Chevron has sponsored the publication of the Red Book of Kazakhstan (a book of endangered species), and popular films on the republic's natural surroundings (10). Another reason for foreign investor interest in environmental legislation is that, according to the MEB, in a number of instances, the environmental standards and norms used in the Republic are more strict than in the home country of the foreign investors(11). Kazakhstan's MEB agrees with the conclusions of the Lucerne conference that "certain requirements of environmental legislation – especially those concerning clean water and air standards – are unrealistically high" (12). Thus, in defending the interests of investors on this point, the Kazakh MEB is distinct from analogous ministries in a number of Eastern European countries.

   It should be noted that the role of foreign investors in general improves the legal climate in Kazakhstan. While recognizing a gradual but slow improvement in the investment climate, foreign investors also point out that there are five fundamental obstacles along the path to creating an influx of foreign investment: "the bureaucracy; the financial risk; Kazakhstan's tax and financial structure; the legal infrastructure/speed of changes in the legal sphere; and currency regulation" (13).
3. **Local businessmen.** A clear illustration of their interest can be found in their attempt to influence the rights of entrepreneurs in separate articles of the law. This was done in one of the draft proposals "On Natural Environmental Protection" which was not sent to Parliament, but published in the press. A similar proposal on the draft law "On Environmental Protection", was also voiced at a session of the Senate Committee for Regional Development and Self-Government (14). However, the proposal was rejected and did not become part of the 1997 Law. Still, article 20, which sets basic duties and rights of resource users, made it into the law.

4. **Local authorities.** Practically speaking, they have increased their authority due to governmental decentralization and by claiming distribution of local resources, thereby often hiding a real budget shortfall and the need to improve living conditions for those living in regions under their jurisdiction. In particular, during discussion of the draft law "On Specially Protected Natural Territories", points were introduced to one version of the draft regarding authorization of local authorities, which contradicted the 1993 law that was in effect, "On Local Governmental and Legislative Organs of The Republic of Kazakhstan" (Article 44). A senator who had prepared the draft law "On Specially Protected Natural Territories" for presentation in the Senate Parliament Committee for Regional Development and Self-Management spoke out for broadening the power of local authorities. These actions of local authorities are a kind of opposite reaction to the former centralized system of control over resources, a reaction that rejects not only the negative but also the positive sides of the former system, as well as the results of their close collaboration with local businesses. The power of local authorities has been expanded, especially in connection with the specially protected natural territories (15).
5. I**ndividual population groups** living in environmental disaster areas or under environmentally unfavorable living conditions (16). A good example is people of Aral Sea area who live in one of the worst environmental catastrophy areas in the world.
6. **Individual enthusiasts, specialists, societies and non-governmental organizations.** A glaring example is the struggle of the NGO "Biosphere" which has fought against the violations of environmental standards by the Leninogorsk non-ferrous metallurgical complex (17).

However, we must distinguish between an interest in affecting law from the actual ability to do so. Many social groups are interested that a specific law be formulated one way or another, but have no power to actually impact on the legislative process. At present in the Mazhilis, there isn't a single deputy representing the green movement and barely a handful of deputies who maintain ties to the greens in their regions or who are concerned with solving environmental problems (18).

Those who drafted the law (at the request of interest groups noted above), including several foreign consulting firms, had clear financial interest in the development of the new 1997 Law, which was financed in part by the World Bank (19). The American firm "Scientific Application of International Cooperation" (SAIC) was hired to worked on the development of the law "On Environmental Protection", on an "agreed upon basis" and in turn hired the Alamty-based representative office of "Pepper, Hamilton and Shitz" (20).

4. Conceptual Legislative Questions

Realistically there are no forces that could have put forth a realistic alternative to the official concept of new legislation, although long before discussions on the laws began, a theoretical concept of legislation was put forth by professor D.L. Baideldinov in a paper entitled "Environmental Legislation of the Republic of Kazakhstan", which appeared in 1995.

The concept of new legislation or "founding principles for constructing the proposed draft law" were built on the following conditions. That the law should:

- be "the chief act of special environmental legislation";
- follow the principle "according to which guaranteeing environmental protection is or should become the basic function of administrative, economic and other activity of judicial officials";
- form environmental-legal standards and rights along the lines of "rights-duties-mechanism-realization-guarantee-responsibility";
- introduce corresponding changes in closely related pieces of legislation;
- ensure "movement toward combining administrative measures with primarily economic measures" (21).

In contrast, the concept of legislation put forth by Baideldinov, proposes that the 1991 Law, despite all the innovations, is based on an old methodology. Therefore we must reject the existing environmental doctrine, which reduced the system of interaction between society and nature to the use and protection of natural areas and monuments. "Today the question is regulation of conditions for the existence of human society in the environment" (22). The Baideldinov considers that it is obligatory to move along a path of developing an "Environmental Codex", which should be "more an encompassing act and regulate the entire circle of legal relationships that arise between society and nature" (23). The Baideldinov proposed his own structure for the "Environmental Codex", which differs from the official concept by delineating sections that correspond to the greater global aim of the "Codex". The following points from Baideldinov's proposed sections of the "Codex" should be mentioned because they possess, in our view, principal significance for developing legislation:

- introduce "the exclusive right of the State to set environmental regulations... independent of the type of ownership of a given natural area";
- determine the jurisdiction of the President in environmental matters;
- that the state should guarantee "environmental rights of citizens and social groups" and should show cooperation to public environmental groups;

- create an environmental bank, which would accumulate environmental payments and taxes;
- give oblast administrations the right to introduce their own norms for environmental quality, which should not be lower than those of the Republic (24). The author also more than once under scored the need for strict accountability for violating the law.

Comparing the two concepts, one can see the main differences. The governmental concept is built on the old approach to legislation but proposes a somewhat modernized concept of rational natural resource use and environmental protection under market conditions. The official concept relies on market mechanisms that are supposed to create conditions favorable for rational resource use and environmental protection. The concept recalls models proposed by the neo-classical economic school, that are subject to serious criticism in the West and which don't consider the fact that market mechanisms are powerless to solve a number of environmental problems (25). Therefore, their application is better viewed as one of several possible instruments for the time being, in absence of more effective means. Thus, the official government concept does not reveal any principal differences from the concept on which the 1991 Law was based with the exception of sections dedicated to market mechanisms for natural resource use and environmental protection. At the same time, the conceptual contradictions are repeated – those which weren't resolved by the lawmakers in 1991.

Against this backdrop, Baideldinov's concept appears more preferable by virtue of its greater depth of understanding of the tasks facing lawmakers and in light of its systemic features for regulating the interaction between society and nature. It also plans for future development of legislation and doesn't simply push aside existing statutes. In connection with this, a number of specialists and the environmental organization "Green Salvation" have supported the Baideldinov's concept.

One must also note that aside from the concepts mentioned above, alternative draft laws were put forth. The NGO National Environmental Society of the Republic of Kazakhstan (NESRK) presented to MEB an alternative variation to the draft "On Environmental Protection" in June 1996. However the MEB, having looked the variant over, rejected it as requiring "serious corrections of patently incorrect and disputed statutes", pointing out the need for modification of the draft (26).

An alternative draft law which was developed at the request of the MEB by a group of specialists including the former Minister of the

Environment and Bioresources S.A.Medvedev, was also rejected. A changed version of this draft was used for future work of the MEB, which prompted its developers to publish an initial variant of the draft (27). Although according to official announcements there were other variants of the law, these were not published and did not become subject to broad discussion.

The low level of activity on the part of the populous and the weakness of NGO organizations advanced the development of the official concept of the legislation and its acceptance as the main concept, because interested ministries defended it.

5. Procedural Aspects

Before moving on to analysis of key instances of legislation, we should examine several aspects of procedural development and discussion of laws to provide a fuller picture of the battle surrounding legislation.

Drafts of the laws "On Environmental Protection", "On Environmental Impact Assessment" and "On Specially Protected Natural Territories", which stand at the center of our focus, were developed by the MEB and then turned over for analysis to ministries and the government and to specialists from the Harvard Institute for International Development (28). The government also sent them to the lower house Parliament (the Mazhilis), to the Committee on Questions on the Environment and Natural Resource Use, to be prepared for consideration in discussions on draft laws (29).

The Committee on Questions on the Environment and Natural Resource Use formed working groups from representatives of interested ministries, organizations, specialists and representatives of the public for introducing notes and proposals into bills. However a clearer determination of the functions and authority of the working groups was still not given, just as was the case in 1991. Apparently the document regulating the activities of the Parliament working groups, and determining the final results of their work, as well as the system for informing the working group members of the results of their work is missing, since it is not mentioned in the Regulations of the Work of the Mazhilis (30). Therefore, for a member a working group, especially if he is not a member of Parliament, it is difficult to have any influence on the final version of a document, since according to the procedure of a working group, no sort of concluding document is signed, but rather a decision is made on the results of discussion of a bill in the working group with recommendations for its hearing in the Mazhilis or return for further work (31).

It is proposed that the members of a working group be specialists on a given issue or specialists on narrow topics. In such a situation, representatives of the public find themselves in a position that is not very useful, since consultative help of specialists is not available to them and without such help, the effectiveness of their participation in the process of discussion of laws is sharply diminished. Therefore, public representatives must seek direct contacts with specialists who might collaborate with them. The narrow geographic representation of NGOs should also be mentioned. Among the working groups in which members of "Green Salvation" participated, there were NGO representatives only from Almaty.

Another instance that complicates working on laws is the violation of Point 27 of the Regulations of the Mazhilis of Parliament from February 8, 1996. According to Point 27 "a list of legislative acts subject to change or recognition of laws that lose effect with the acceptance of a given law and proposals for reworking normative acts that are required for the implementation of a given law" should be appended to each draft law. However, not one of the environmental bills mentioned above that were presented for review to the Mazhilis in 1996, or the first half of 1997, contained such a list. Such a list for the draft law "On Environmental Protection" appears later in a comparative table of changes and additions to the draft, prepared by the Senate April 25, 1997.

The absence of a list puts not only public representatives, but also parliamentarians in a difficult position. Not being specialists in the area of environmental legislation, parliamentarians are unable to understand all the interdependencies between one or another law and other pieces of legislation, which leads to a lack of coordination of separate laws. As a number of those working on the 1991 Law recognized, the latter was weakly tied to the old Criminal Codex of 1959. An analogous acknowledgment is made by specialists who recognize that the "Criminal Codex of the Republic of Kazakhstan has still not been brought in line" with the 1991 Law (32). To a significant measure, this fact predetermined the Law's narrow effectiveness in the struggle against environmental violators and the unsuccessful attempts of the public to bring criminal charges against those guilty of environmental violations.

In bills and final versions of laws, there are no or at most only general references to other existing laws, on the basis of which one or another newer laws are supposed to rely. It is possible that such a practice has been consciously laid out, since those who worked on the draft law "On Environmental Protection" considered that the "draft law contains primarily norms for direct action, which reduces reference regulations to

a minimum" (33). Still, a significant amount of general references complicates the work of lawmakers, places in doubt the agreement of the articles of the given law with those of other laws and creates difficulties for putting the law into practice.

Moreover, the position of legislators is unclear, as it changes for no apparent reason. For instance, in the law "On Land", exact references may be small in number, but they do exist: for example in Article 115 "Protection of the Right to Personal Property and the Right to Land Use" there is a reference to Articles 256-267 of the Civil Codex. And in the preamble to the law there is a reference to the law "On the Temporary Delegation of Supplementary Authority to the President of the Republic of Kazakhstan and to the Heads of Local Authorities". In the laws "On Environmental Protection" and "On Specially Protected Natural Territories" there are no references to any specific law. Vague references are made, rather, to the "laws of Kazakhstan" in general. In observations from a consultant of the Harvard Institute for International Development, it is noted that "the majority of statutes refer to other laws or their areas of application – (but it remains unclear) whether or not there exists such a law or whether this is an empty phrase" (34).

According to Mazhilis Regulations amendments to law are introduced by members of working groups, but during the next stage of a law's development, the amendments appear as introduced by the Committees, which makes the amendments anonymous and doesn't allow for tracing them to specific parliamentarians expressing the interests of their electorate. Furthermore, this fully excludes the possibility for familiarizing the public with articles and amendments introduced by their representatives. One can be certain of this by examining the comparative tables of additions and amendments to the laws.

Personal contact with the parliamentarians plays an important role. The importance of these contacts is probably greater than official contacts. Through personal contacts, parliamentarians are often willing to discuss the shortcomings of the procedure for ratifying laws off the record. For instance, one is struck by the lack of legal assistance on the part of the legal information branch – the Informational-Analytical Center of Parliament – for parliamentarians. At hearings before the Mazhilis on the draft law "On Environmental Protection", March 12, 1997, it was clear that the majority of parliamentarians were not familiar with the "Opinion on and Commentary to the Law of the Republic of Kazakhstan on Environmental Protection, draft from June 19, 1996", prepared by S. Dreunovsky, a consultant of the Harvard Institute for International

Development July 25, 1996. The document was not brought to the parliamentarian's session, in spite of the fact that it was sent to the Deputy Minister of the MEB and to the Chair of the Committee for the Environment and Natural Resource Use of the Mazhilis of Parliament July 28, 1996 (35).

Similar practice promotes a non-democratic form of discussion and passage of laws. The narrow circle of specialists and lawyers who have full information, by using softened regulatory requirements and the opportunity to allow minor violations, have a real opportunity to impact the passage of a law and its contents. A glaring example of this is the discussion of the draft law "On Specially Protected Natural Territories" during the second reading before the Mazhilis, which did not require much time. The main argument against long discussion was the fact that the draft had been carefully worked out by specialists. But no less important was that the draft law was presented for discussion after lengthy and difficult discussion on the draft law "On Environmental Protection" (36).

Several weeks later the draft law, along with a number of substantive notes, was returned for completion to the Mazhilis, having served as an example of a poorly developed bill, although the Mazhilis speaker expressed a contrary opinion (37). He considered the fact that "the greater part of the document was voted on practically without discussion" as testimony to the "growth of professionalism and to the painstaking and large amount work that had been done in the committees for preliminary draft bill development" (38).

After passing a bill in the lower house of Parliament, the bill goes to the Senate or the Upper House of Parliament, where depending on the law's content, it is sent to one of the Senate committees that prepares it for hearing before the Senate. The committee can request comments and additions to the draft law from ministries, departments and specialists. In turn, the latter can themselves send their observations on the bill to the committee, as can the public. Before sending the bill for Senate hearings, the committee holds its own hearings and invites specialists and representatives from ministries, departments and the public. After a committee resolution, the bill goes to the Senate for a hearing. After a law or laws are passed by Parliament and before they are signed by the President, the Constitutional Council – which was replaced in 1995 by the Constitutional Court – examines the "laws for their conformity to the Constitution". After this process, the law is sent for the President to sign (39).

Still another non-regulatory factor has had a fundamental effect on the process of developing and ratifying laws: the Government's interest

in passing inexpensive laws that require minimal resources for their observance. The stern rejection of bills requiring significant expenditure – for instance, for monitoring environmental quality – is linked to this interest. In other words, such an approach to legislation recalls the former Soviet principle of residual financing for departments viewed as secondary or non-profitable.

Moreover, consideration should be given to the desire of parliamentarians – by their own admission – not to spoil the relationship between members of the Upper and Lower Chambers of Parliament as well as with their President. In such a situation, it is quite logical to suppose that the President, for his part, responds to the Parliamentarians with reciprocal respect.

The openness of the process of discussing laws can, to a certain degree, be judged from the following table.

OPENNESS IN THE PROCESS OF DISCUSSING LAWS

Title of the law, year it was passed or developed into a bill	Available for national discussion	Available for scientific assessment	Alternative bill available	Existence of working group
1	2	3	4	5
On Environmental Protection 1997*	**	**	**	**
On Specially Protected Natural Territories 1997*	No	No	No	Yes
On Using Atomic Energy 1997	**	**	**	Yes
On Environmental Impact Assessment 1997*	No	No	No	Yes
On Radiation Safety for the Population 1997 (year the law was drawn up)	***	No	No	Yes
On Introducing Changes and Addenda to the 1996 Water Code	No	No	No	No

Sources:

The table includes data from reference sheets attached to draft laws at the time they were submitted to the Mazhilis for review.

* Laws that were developed with the participation from the U.S. firms Scientific Applications International Company (SAIC) and Pepper, Hamilton and Shitz .
** Precise data was unobtainable.
*** Data was missing in the reference sheet.

6. Public Participation

According to the Constitution of the Republic of Kazakhstan, "Citizens of the Republic of Kazakhstan have the right to participate in the management of the State's affairs directly or through their representatives, to appeal personally and also to direct individual and collective appeals to organs of the State..." (Article 33, Point 1).

The groups interested in the development of legislation have been mentioned above; some numerical data might complete the picture.

A comparison of the working groups of the Mazhilis Committee for the Environment and Natural Resource Use shows that the number of representatives from the public and from public organizations in working groups is insignificant – which also rather clearly reflects the general make-up of current forces.

COMPOSITION OF WORKING GROUPS

Title of the law and year of passage or elaboration	Number of people in the working group	Number of representatives from the public in the working group	Percent of representatives from the public in the working group
1	2	3	4
On Environmental Protection 1991(a)	37	8[3]	21.6% [8.1%]
On Environmental Protection 1997 (b)	**	**	**
On Environmental Impact Assessment 1997 (c)	24	1	4.1%
On Specially Protected Natural Territories 1997 (d)	22	2(1)	4.5% (9.0%)
On Using Atomic Energy 1997 (e)	15	1	6.6%
On Radiation Safety for the Population 1997 (year the law was drawn up) (f)	21	2(1)	9.5% (4.8%)

Sources:

a. Resolution of the Presidium of the Supreme Soviet of Kazakhstan SSR on the Formation of a Working Group for Preparing of the draft law of Kazakhstan SSR "On Environmental Protection", January 22, 1991.
b. ** — Precise data was not successfully obtained.
c. Resolution of the Mazhilis Committee on Environmental Issues and Natural Resource Use, September 4, 1996, N21.
d. Resolution of the Mazhilis Committee on Environmental Issues and Natural Resource Use, October 1, 1996, N26.
e. Resolution of the Mazhilis Committee on Environmental Issues and Natural Resource Use, November 13, 1996, N30.
f. Resolution of the Mazhilis Committee on Environmental Issues and Natural Resource Use, May 5, 1997, N12.

[*] – The figure in brackets is the number of representatives from NGOs that are officially supported by the Government.

(*) – The figure in parentheses is the number of representatives from NGOs that are officially listed in the working group as branch consultants for working with the Mazhilis committees or indicates some other official duty.

Based on the Resolutions noted above and newspaper materials, NGOs have played a more or less active role in the development of legislation (for the laws listed in the table above) during the years 1996-1997:

NGO	Location	Laws in which the NGO took part in discussions
National Environmental Society of the Republic of Kazakhstan	Almaty	2
Tabigat	Almaty	2
The Nevada-Semipaltinsk Movement	Almaty	2
Green Salvation	Almaty	4

Through regulation of passing laws, it is stipulated that "simple citizens are not able to appeal to the Constitutional Council regarding parliamentary legislation, presidential edicts, state decrees ... [and] actions of official individuals" (40).

Besides the limitations superimposed by laws and the procedures mentioned above, two main limitations to law-making activities can be determined. First, Kazakhstan environmental NGOs do not have access to lawyers, whose presence in NGOs up to now has been a great rarity. Second, lack of financial resources makes it impossible to coax legal specialists into participating in the process of discussing draft bills or offering consultative services to NGO activists. Enticing lawyers or specialists from other regions of Kazakhstan presents a real problem due to travel costs, which is why all the NGOs taking part in the law -making process are located in the southern capital of Almaty, where Parliament used to operate. Since Parliament moved to Astana in December 1997, the situation for those NGOs has grown more complicated.

Thus, the conditions under which environmental legislation has taken shape have been defined by the following factors: the aim of creating a new fundamental law, the weak notion of government at the base of new legislation, the patent interest of officials and representatives in new legislation along with the passivity of a broad mass of the population, and the weak participation of the public and environmental NGOs in the law-making process.

The inconsistent character of the law-making process was acknowledged even by the President, when he spoke on June 30, 1997, at the joint session of the two houses of Parliament concerning the end of work for the second session of Parliament. He noted that "a portion of the laws that have reached Parliament came into being spontaneously and attention hasn't always been given to balancing the factors of social interests" (41).

"Under current conditions, when a legislator is feeling real pressure from certain social groups and institutes on the one hand, and a deficit of information on the positive and negative aspects of a law being taken up and on the structure of interests wrapped up in a law on the other hand, views established (under the Soviet Union) on government elitism in legislation must be re-evaluated. It would be useful to provide for mechanisms that block illegal forms of pressure on lawmakers and to grant legal opportunities for broader participation of all interested population groups in the process of preparing a law and monitoring its implementation" (42).

1. Natsional'naia programma ratsional'nogo prirodopol'zovaniia. MEB. - Almaty, 1993. - S.19.
2. Informatsionnyi ekologichskii biulleten' Respubliki Kazaskstan. 1kvartal 1996 goda. - Amlaty, 1996. - S.62.
3. Ibid.
4. Ibid., s.65.
5. Ibid., s.66-68.
6. Baishev K.S. O kontseptsii formirovaniia novogo ekologicheskogo zakonodatel'stva Respubliki Kazakhstan // Materialy zacedaniia kruglogo stola "Problemy razvitiia ekologicheskoi kul'tury gosudarstva i naroda Kazakhstana: pravovye aspekty" 5 aprelia 1996 goda. - Almaty, 1996. - S.8.
7. Retsnzionnye popravki i kommentarii k zakony Respubliki Kazakhstan "O zashchite okruzhaiushchei sredy". Chernovoi variant ot 5 sentiabria 1995 goda. S. Dreunovskii, 25 ianvaria 1996 goda. - S.2.
8. Pearce D.W., Warford J.J. World Without End. - Oxford, New York, 1996. - P.344-345. See: Mamonov V.V. O mekhanizme otrazheniia interesov uchastnikov pravoootnoshenii v zakondatel'stve Kazakhstana // Zakonotvorcheskii protsess v Respublike Kazakhstan: Sostoianie i problemy. - Almaty, 1997. - S.105.
9. Postanovlenie Mazhilisa Parlamenta Respubliki Kazakhstan o proekte Zakona Respubliki Kazakhstan "Ob osobo okhraniaemykh prirodnykh territoriiakh". 12 marta 1997 goda. - St.21.
10. Krasnaia kniga Kazakhstana. - Almaty, 1996. - T.1 Zhivotnye. Ch.1 Pozvonochnye.
11. Informatsionnyi ekologicheskii biulleten' Respubliki Kazakhstan. 1 kvartal 1996 goda, s.65,67.
12. Programma deistvii po okhrane okruzhaiushchei sredy dlia Tsentral'noi i Vostochnoi Evropy. 1995.- S.42.
13. Delovaia nedelia. - 1996. - 23 avgusta; Panorama. - 1997. - N23.
14. Zakon Respubliki Kazakhstan "Ob okhrane okruzhaiushchei prirodnoi sredy". Proekt ot 26 aprelia 1996 goda // Dozhivem do ponedel'nika. - 1996. - 31 maia, 7 iunia.
15. Zakon Respubliki Kazakhstan "Ob osobo okhraniaemykh prirodnykh territoriiakh". 15 iulia 1997 goda // Kazakhstanskaia pravda. - 1997. 6 avgusta.
16. Zdes' ptitsy ne poiut. Interv'iu s E. Gabbasovym // Kazakhstanskaia pravda. - 1997. - 26 marta.
17. Ekspress K. - 1994. - 7 iunia; Leninogorskaia pravda. - 1993. - 15 sentiabria.

18. Kazakhstanskia pravda. - 1997. - 12 iunia.
19. Stabblbain S., Lipsits Iu. Natsional'nyi plan deistvii po okhrane okruzhaiushchei sredy v Respublike Kazakhstan. (Vzgliad zarubezhnogo eksperta) // Noosfera. - 1996. - N1. - S.326.
20. Informatsionnyi ekologishceskii biulleten' Respubliki Kazakhstan. 1 kvartal 1996 goda, s.62-63.
21. Ibid., s.64-65.
22. Baidel'dinov D.L. Ekologicheskoe zakonodatel'stvo respubliki Kazakhstan. - Almaty. 1995. - S.165.
23. Ibid., s.166.
24. Ibid., s.166-170.
25. Rennings K., Wiggering H. Steps Towards Indicators of Sustainable Development: Linking Economic and Ecological Concepts // Ecological Economics. - 1997. - Vol.20, No. 1, January. - P.25-36.
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27. Zakon Respubliki Kazakhstan "Ob okhrane okruzhaiushchei prirodnoi sredy". Proekt ot 26 aprelia 1996 goda.
28. Retsenzionnye popravki i kommentarii k zakonu Respubliki Kazakhystan "O zashchite okruzhaiushchei sredy".
29. Ekologicheskoe sostoianie okruzhaiushchei prirodnoi sredy Respubliki Kazakhstan v 1995 godu i mery po ee uluchsheniiu. Gosudarstvennyi doklad. Almaty, 1996. - S.88.
30. Reglament Mazhilisa Parlamenta Respubliki Kazakhstan. 8 fevralia 1996 goda. - Paragraphs 27, 29.
31. See for instance: Zakliuchenie po proektu Zakona Respubliki Kazakhstan "Ob ekologicheskoi ekspertize". Komitet po voprosam ekologii i prirodopol'zovaniiu Mazhilisa Parlamenta. - 1996. - Oktiabr'.
32. Baidel'dinov D.L. Ekologicheskoe zakonodatel'stvo Respubliki Kazakhstan, s.76.
33. Informatsionnyi ekologicheskii biulleten' Respubliki Kazakhstan. 1 kvartal 1996 goda, s.64.
34. Otzyv i kommentarii k zakonu Respubliki Kazakhstan po okhrane okruzhaiushchei sredy, proekt ot 19 iiunia 1996 goda. S. Dreunovski, 25 iulia 1996 goda. - S.3.
35. Stenogramma utrennego zasedaniia Mazhilisa Parlamenta Respubliki Kazakhstan 12 marta 1997 goda. - S.15; Soprovoditel'noe pis'mo k "Otzyvu i commentariam k zakonu Respubliki Kazakhstan po okhrane okruzhaiushchei sredy, proekt ot 19 iunia 1996 goda".

36. Stenogramma vechernego zasedaniia Mazhilisa Parlamenta Respubliki Kazakhstan 12 marta 1997 goda. - S.27; Postanovlenie Mazhilisa Parlamenta Respubliki Kazakhstan o proekte Zakona Respubliki Kazakhstan "Ob osobo okhraniaemykh prirodnykh territoriiakh". - 12 marta 1997 goda. - S.27.
37. Postanovlenie Senata Parlamenta Respubliki Kazakhstan o proekte Zakona Respubliki Kazakhstan "Ob osobo okhraniaemykh prirodnykh territoriiakh". - 15 maia 1997 goda.
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39. Ukaz Prezidenta Respubliki Kazakhstan, imeiushchii silu Zakona "O Konstitutsionnom Sovete Respubliki Kazakhstan". - Almaty, 29 dekabria 1995. - St.17.2.1.
40. Situatsiia s pravami cheloveka v Kazakhstane: ianvar' - oktiabr' 1996 goda. Otchet Kazakhstano-Amerikanskogo biuro po pravam cheloveka i sobliudeniiu zakonnosti. - Almaty, 1996. - S.2.
41. Panorama. - 1997. - N26. - 4 iulia.
42. Mamonov V.V. O mekhanizme otrazheniia interesov uchastnikov pravootnoshenii v zakonodatel'stve Kazakhstana // Zakonotvorcheskii protsess v Respublike Kazakhstan: Sostoianie i problemy. - Almaty, 1997. - S.105.

CHAPTER 3

DEVELOPING KEY POINTS OF LEGISLATION

The absence of "a balance of social interests" also affects the law-making process. From the very first days of working on new laws stormy debates began and in the very first points of the drafts of the laws contradictory interests of various strata of society were reflected. The framework of the law "On Environmental Protection" underwent notable changes. Numerous changes were introduced into the content of separate articles. This has not been the case with other environmental legislation. We will spend time on the aspects of laws that have become the main points of conflict.

1. Environmental Rights of the Individual

One of the central points of conflict is the issue of environmental rights of the individual. In the preamble to the 1991 Law which states the law's aims, it is pointed out that "the current law was invoked to guarantee protection for the individual's right to an environment favorable to his life and health" (1). Since the individual's right to an environment favorable to his health was recognized in even during the Soviet period (the 1991 Law) it was quite unexpected that there would be a blatant and persistent desire on the part of Kazakh legislators not to honor this principle. It is also odd that this point of the law is being rejected in a country that signed the Rio De Janeiro Declaration, which proclaims the right of human beings "to a healthy and productive life in harmony with nature" (2). Moreover, the rights of an individual "to an ecologically sustainable and healthy environment" are established in the Model Law on Environmental Protection worked out by the European Council and made available to Kazakhstan parliamentarians (3).

The primary arguments against the point of law under discussion were put forth in the Mazhilis of Parliament. In the opinion of the Mazhilis Committee on Environmental Issues and Natural Resource Use the formulation of the right in question is not correct since it contradicts the Constitution. Moreover, when the draft law was under discussion, Kazakhstan and not yet subscribed to the 1948 Universal Declaration of Human Rights (4). The reason Kazakhstan had not subscribed to the Universal Declaration was acute financial deficit – in other words, Kazakhstan did not have the money to look after the individual's rights

and therefore didn't want to take on obligations that it was unable to fulfill (5).

Still, this meant that important and fundamental points slipped by – rights that were already defined in the Constitution and international conventions signed and ratified by Kazakhstan. First, the Constitution declares the right of citizens to life and health (Article 15.1 and Article 29.1), which fully corresponds to the spirit and statutes of the Rio De Janeiro Declaration. Second, the fact that Kazakhstan had not subscribed to the Universal Declaration did not keep the country from signing and ratifying the Convention on Children's Rights. According to Article 4 of this Convention, the participating governments are bound "to take all required... steps for implementing the rights recognized in the current Convention", "while taking into account fathers, guardians or other individuals who bear responsibility for it" (Article 3).

One receives the impression that lawmakers assumed the feasibility of observing separate rights of the individual while ignoring other rights of the individual or presupposing the existence of the rights of one population group without doing the same for other groups. Such a position of the members of the Mazhilis suggests ignorance, lack of understanding or disregard for the principle of "universal and indivisable individual rights", as declared in the Viennese Declaration and 1993 Program of Action.

As a result, in spite of the fact that members of the Mazhilis again proposed including this right in discussion in the draft law at hearings for the law on March 12, 1997, the Mazhilis rejected this proposal by a majority vote, fearing a contradiction of the Constitution. This decision was supported by the State Representative (6). In the preamble, the draft law's objective was formulated in the following manner:

"The current law defines legal, economic and social bases for environmental protection". Nevertheless, Article 5.1 of the draft law, in which the issue of individual rights was again raised, was passed. Despite the fact that, according to the arguments mentioned above, it also contradicted the Constitution, the Mazhilis deputies voted to include it in the draft law (7).

The position of the Senate has turned out to be more flexible. Changes and addenda to the draft law approved by a resolution of the Senate of the Republic of Kazakhstan "On the Draft Law of the Republic of Kazakhstan On Environmental Protection" May 15, 1997 (S.1), includes a point on the rights of the individual, grouping it with the goals of legislation, while noting that it corresponds to the principle of the Rio De

Janeiro Declaration. Thus, the senators did not see the given amendment as contradicting the Constitution. As a result, Article 5.1 of the law "On Environmental Protection" states that "each citizen, persons without citizenship, and even foreigners who are in the territory of the Republic of Kazakhstan have the right to an environment favorable to their life and health".

The 1991 Law envisioned that local Councils of People's Deputies were supposed to "ensure the implementation of the environmental policy and programs of Kazakh SSR, and also the environmental rights of citizens" (8). In the new legislation, the issue of guaranteeing rights was not raised. However, having introduced the amendment to the draft law and having declared the right of the individual to a healthy environment, the Senate failed to set the mechanism for implementation of these rights. Finally, in the 1997 Law, in Article 5, it is stated that "each citizen and persons without citizenship... have the right to an environment favorable to his life and health, reliable information on the status of the environment and steps for its improvement, and to compensation for harm caused to their health and property". Thus the debates surrounding Articles 31 and 38 of the 1995 Constitution concluded with the official recognition of the rights of the individual in the 1997 Law – though not really a part of the law's purpose – and with the acknowledgment that such rights did not contradict statutes of the 1995 Constitution.

2. Prevention of and Compensation for Environmental Damage

Principles of defending the environment changed in new bills in light of new approaches and the demands of market relations. There appeared principles for "guaranteeing environmental security and restoration of damaged natural ecosystems", "state regulation", "guaranteeing biological diversity", "gradual introduction of paying for environmental resource use", and other changes. However, principles of prevention and compensation for environmental damage were removed from the bills presented by the Mazhilis to the Senate (9).

In the 1991 Law, in Article 4, the principle of compensation is stated as "full compensation for damage caused to the environment", which was a strong feature of the law. However, in the in existing legal theory, "the notion of environmental damage is not worked out", which "is the primary reason for failure to file suit" for environmental damage, since "the definition for measuring damage" and "the establishment of a concrete individual guilty of an environmental crime" is a difficult task. Therefore the main category of criminal cases are those "on illegal hunting and

illegal use of biological resources from lakes, rivers, swamps, etc.", which means a cessation of the activities causing the damage with subsequent possibility of material compensation (10). In other words, because of an undeveloped mechanism for its application, the principle voiced in the 1991 Law on compensation did not have a very practical application.

During discussion of the draft law "On Environmental Protection", principles of preventing and compensating for environmental damage occasioned a negative reaction. The Mazhilis did not include them in the text of the new draft law (11). The Senate introduced the principle of preventing environmental damage in a section of principles of the draft law "On Environmental Protection" (12). The given weaknesses of the 1991 Law and law enforcement, the lack of legal practice and traditions of observance of law by the populous were evident reasons for active opposition to introducing the aforementioned principles in the new draft law. The deep-seated reasons for opposition are that compensation represents additional expenses for the businessman and the poor. Having rejected the principle of compensation for damage done to the environment at hearings, both houses of Parliament introduced to the draft law and to another draft law "On Specially Protected Natural Territories", separate articles governing "compensation for harm" done to the environment, citizens' health, and to property of citizens, organizations and the government, including even moral damage. After some further work these articles were in fact included in the laws (13).

Another area of conflict was the articles on the rights and obligations of citizens and NGOs in the area of environmental protection. The argument of parliamentarians can be summed up by saying that citizens and NGOs should have the right "to raise issues for bringing to account" the guilty, and to "file suit for compensation for damage done to the health and property of the individual" (14). In the opinion of Parliament, there is no need to explain in detail the principle under discussion due to the fact that it is already described in the Civil Code (15). Actually, the Civil Code calls for a procedure for compensation for damage done to the property of citizens (Articles 255-267), but such a formulation of the issue strips the general populous and society of the right to bring suits aimed at compensation for environmental damage. "In fact, there is a world view being cultivated for the Republic's citizens in which natural resource use is seen not as an environmental issue, but as an economic question that has at the same time an environmental nuance to it" (16). However, the principle of compensation for environmental damage does not mean that only state structures have the right to secure such compensation, and here the

lawmakers repeated the omission of the 1991 Law (Articles 7 and 62), by depriving society of the right to obtain compensation for environmental damage and making society dependent upon action by state structures (17). To be fair, one must note that this problem is far from being satisfactorily resolved in other countries as well.

Proceeding using similar logic, the developers of the draft law "On Specially Protected Natural Territories" also failed to include citizen and NGO rights to demand compensation for environmental damage, but did include a point on damage done to the individual, which makes the given article of the law "On Specially Protected Natural Territories" (Article 7.1) simply absurd. Currently, NGOs interested in preserving reserves and national parks can file suit only in the case of damage being done directly to citizens. Citizens who are not members of NGOs are generally deprived of any right to obtain compensation for environmental damage to specially protected natural territories (Article 6.1).

Moreover, the application of the principle of compensation for damage done to individual citizens is of a limited nature, since "in the first place, the established individual damage in the majority of instances does not adequately reflect the damage done to society on the whole, and, in the second place, the filing of a civil suit is allowed only after the damage has already been done. By that time, damage done to human health and life, and to the environment is often of an irreparable nature" (18). This is why the principle of prevention and the principle of compensation for environmental damage and damage to individual health and property must be introduced into legislation simultaneously. Moreover, in a number of instances, because of economic and social reasons, the damage cannot be avoided, but can only be compensated for. For these very reasons the populous and society must be given the right to obtain compensation for damage done not only to health and property, but also to the environment.

The principle of compensation for environmental damage was excluded from the draft of the 1997 Law and later from the 1997 Law, but included in the Edict "On Land" (Article 3.8 "Land Damage") and in the law "On Specially Protected Natural Territories" (Article 4). Thus, the environmental aspects of a series of the most important articles of the 1997 Law and other laws – where compensation for damage is mentioned – becomes cloudy and contradictory. For instance, the law "On Privatization" plainly points out that "responsibility for damage done to the environment and to the health of the populous..., which predates privatization, is the responsibility of the former owner of the privatized

entity – or the State". Following privatization, responsibility for environmental damage caused by the activities of the new owner is regulated by legislation of the Republic of Kazakhstan (19). In the draft law "On Environmental Protection" which was approved by the Mazhilis March 12, 1997, the Article "On Ecological Demands During Privatization of State Property", was partially repeated in the Article 23 of the law "On privatization " which defines the process for evaluating environmental damage and for demarcating responsibility for environmental damage during privatization (20).

However, the Senate removed from Point 4 of the article on compensation for environmental damage the statutes on evaluating environmental damage and responsibility for such damage, justifying itself by saying that "the organ that is responsible for privatization cannot provide an evaluation of environmental conditions. Placing partial responsibility on the government will slow the rate of privatization". In the Senate version, nothing is said of environmental damage or responsibility for such damage, while there is a cloudy definition of "clean-up and neutralization of businesses or other private entities", which operates at "the government's expense and (or) with the consent of the new owner" (21). In the 1997 Law, the given formulation is posited without change, which patently contradicts the law "On Privatization", lowers environmental requirements and, in effect, removes responsibility for compensation for damages predating privatization both from the State and from the new owner.

The problem of compensation for damage done to citizens and the environment arises from Article 86.2 of the 1997 Law where it is stated that "Legal and physical persons whose activities are linked to an increase in environmental danger are obliged to make restitution for harm they cause if they cannot prove that the harm arose due to an uncontrollable reason or because of the victim's intent". In the first place, it isn't clear-who is supposed to pay for environmental damage when an "uncontrollable force" has interfered? In the second place, if a factory is very dangerous and there is the likelihood of intervention by an "uncontrollable force", then why has no obligatory fine been set to cover the environmental risk? A mechanism for compensation not only for business owners and workers at a dangerous site, as stipulated by Article 32.2 of the 1997 Law – but also for the surrounding environment and the population should also be provided. Article 30 of the 1991 Law better satisfies this goal.

The situation is exacerbated by the fact that lawmakers have relied on a traditional interpretation of damage compensation in their work, reducing it, especially in the 1997 Law, to compensation for harm done to health and damage done to the property of citizens. Moreover, all the definitions of damage already accepted in international practice, listed below in points 1-3, were not fully applied.

1. Harm to individual health, which can be caused "directly by pollution, as well as indirectly through polluting the environment".
2. Environmental damage that "lowers the productivity of natural resources and physical capital".
3. Damage to environmental quality (22).

Currently, in many countries there is an ever-broadening introduction of the practice of compensation for damage done to the environment in its natural form, in other words, restoration of the productive capacity of natural processes and renewal of environmental quality (23). For instance, this principle is embedded in Russia's legislation. In the Russian law "On Environmental Protection", in Section XIV "Compensation for Harm Caused by Environmental Violations", it is stated that legal entities and individuals "who have caused harm to the environment, to the health and property of citizens, and to the national economy ... are required to make full restitution for such damage". In addition, "with the consent of the sides on a court decision or court arbitration, the harm can be compensated for on the spot through requiring the responsible party to restore the environment" (24).

In the 1991 Law, as well as in the draft law, there is mention of monetary compensation, which is implemented according to "fixed taxes and methods for calculating the scope of damage, and in their absence, by the actual cost of restoring the damaged environment, taking into consideration the losses incurred" (25). The 1997 Law simply repeats this formulation (Article 86.1).

However, other active laws in Kazakhstan propose not only monetary compensation for damages, but also a physical compensation. For example, in Articles 3 and 104 of the Edict "On Land"; Articles 48.2 and 63.1, sub-point 16 of the law "On Mineral Resources and Mineral Use".

In Article 41, in sub-points 16 and 17 of the law "On Oil", not only is the requirement to avoid damage pointed out, but also the physical restoration of land plots and other natural sites degraded as a result of natural resource use is required.

In the 1997 Law it is unclear whether the right to file suit for compensation for environmental damage is given to organizations,

institutions, companies and businesses that have experienced damage as a result of pollution or environmental destruction, or that have expended resources compensating for such damage that has taken place through the guilt of other legal entities or individuals. In contrast to the 1997 Law, Article 78 of the 1991 Law points out that businesses and establishments that have borne the expense of environmental damage "have the right to make legal claims (recourse)" against those guilty of the damage.

The parliamentarians, having included in the law "On Environmental Protection" and "On Specially Protected Natural Territories" all of the formulations mentioned above, have thus significantly reduced the environmental protection role of mechanisms for prevention of and compensation for environmental damage. The lack of a clear definition of damage has injected vagueness into the principles for setting payment for protecting, replacing and polluting the environment, and has given rise to debates surrounding the aims and forms of monitoring.

3. Payment, Norms and Monitoring

One of the things that "frightens" our lawmakers surrounding the word "damage" is the meaning itself of the idea of "damage to the human environment", which is understood by the Kazakh business community as an exclusively criminal action. Professor N.F. Reimers defines it as "an ecological-social-economic, man-made change that is significant to it [the environment – S.K.]" (26). According to Reimers, it is possible to use the label "damage" for any economic activity and, first and foremost, such types of activity that pollute in any way: mining mineral resources, agricultural activity and waste burial. However, as defined by the example above, harm can arise not only because of violations of environmental protection legislation, but also in connection with daily economic activity. Moreover, Reimers notes that damage must be defined by degrees as significant and insignificant.

Nevertheless, along with the general negative perception of the concept, in the opinion of a number of MEB specialists, the meaning of "damage to the human environment" must be changed for psychological reasons to a more neutral definition, one that reflects the economic policy well-known to manufacturers, for instance: "payment for using natural resources, payment for polluting the environment and payment for the protection and replenishment of natural resources".

The draft law "On Environmental Protection", passed by the Mazhilis includes the payments mentioned above (27). In special laws that were

passed earlier, there are articles on land re-cultivation, and soil fertility restoration that actually define the mechanisms for damage compensation, although they are formally called something else. Here, the lawmakers of both houses introduced nothing that was really new in comparison with the 1991 Law, having excluded from Article 21 of this law "other payment for special natural resource use". However, the notion of damage has not only psychological significance; it also facilitates defining payment as a form of damage compensation and regulating limited and excessive payments.

Article 27 of the draft law calls for two types of payments: "for emissions and dumping of polluting substances and waste disposal" (in the old law, "within the parameters of established limits", Article 24) and "payment for environmental pollution beyond standard limits", which is levied in increased measures. In spite of the objections of a number of senators to dividing payment into limited and excessive categories, the principle of limitation was observed in the 1997 Law (Article 29), although the formulation in the 1991 Law, which pointed out that payment for "emissions and dumping... and waste disposal" is "a form of damage compensation" (Article 26.1) was excluded. While these payments were not recognized as "a form of damage compensation", they still must go to local funds for environmental protection according to Article 33.4 of the 1997 Law. The collection of payment for excessive pollution exists in "the system of established legislation", but without reference to concrete laws.

With regard to size of payment, Western experts reckon that "in those countries of Central and Eastern Europe in which fines for polluting have been applied in the past, they were usually defined for a very narrow range and did not impact business activity" (28). In the current period, the situation is worsening due to the difficulties with the transition phase in the countries mentioned and in Kazakhstan. MEB data show that violations of environmental protection legislation by businesses are massive. In the first quarter of 1997, there were 5,632 violations of air standards and 4,309 violations of water standards. A number of businesses produced waste without having permission to do so, including the joint venture "Tengiz Chevron" during the first quarter of 1997. One of the main reasons for environmental violations is the severe financial situation of businesses, which often renders them unable even to implement scheduled steps for waste reduction. Apparently, this also explains the dynamic for levying fines. For the first quarter of 1997, 271 fines were assessed totaling 1,018,000 tenge and 282,260 tenge were collected; 123 claims were set forth totaling 16,240,000 tenge and 10,210,000 were collected (29). On the whole the facts

described support the conclusions of experts, supplementing them with the statistics of mass violation. Paying fines is evidently is less costly than observing the law.

Thus, on the one hand payment is an instrument promoting improvement in environmental conditions but, on the other hand, a factor that increases business overhead and worsens a business' financial situation. In other words, the issue of payment bears a political stamp and depends on how the official economic and official environmental policies of Kazakhstan will be balanced, and on how environmental and economic priorities will be arranged.

Another side to the problem is standardizing environmental quality – yet another basic principle of environmental legislation (30). The normative basis for environmental quality at present is undergoing serious review in connection with the fact that a number of standards are outdated and must be brought in line with international norms and standards, and better adapted to market conditions. At this point, the MEB has prepared a series of new procedures, guides, laws and recommendations on carrying out various environmental measures. However, the fundamental state standards, and building and sanitation norms of the former Soviet Union from 1980, and even 1970, are still being used for environmental protection policy (31).

During discussion of the draft law "On Environmental Impact Assessment", standards and norms became an acute issue. On the basis of which norms should an impact assessment be conducted? Those of the former Soviet Union, the newly-developed standards and norms, or the norms of countries that export capital and equipment? In the law "On Environmental Impact Assessment", the use of governmental standards and norms in effect in the territory of the Republic is secured, but again without indication of concrete standards and norms which are in effect at the present time (Article 4.3). Such uncertainty coupled with the mixed nature of normative documents creates the opportunity for arbitrary use of standards and norms, or even deviation from their use – especially for influential foreign investors who consider the standards and norms of the former USSR to be unrealistically high.

Article 4.3 of the law "On Environmental Impact Assessment", formulates environmental impact assessment as a test of adherence to assessable documentation of the norms and requirements contained in "laws..., standards, norms and rules in effect in the territory of the Kazakhstan Republic". Furthermore the Mazhilis' adopted Article 33 of the draft of a basic law in which observing "norms of environmental quality

is obligatory for all legal entities and individuals ". Despite these decisions, however, the Senate introduced into the article under discussion an addendum: "If in the country of investors and creditors..., and of equipment suppliers, less severe norms of environmental quality are in effect", than in Kazakhstan, a project may be implemented in "accordance with the foreign norms, given the positive conclusion of a state environmental impact assessment" (32). The Senate's amendment is strengthened in the 1997 Law (Article 35). Thus, confusion is created in applying the articles mentioned above, and the entrepreneur from a country with lower standards is in a more profitable position then the local businessmen or entrepreneurs from countries with standards similar to those of Kazakhstan.

This promotes orientation toward lower environmental standards and contradicts new legal vistas aimed at the recognition of "the right of the individual to the maximum highest achievable standards" for the environment (33). In such a situation a separate chapter dedicated to the standards and norms in the law "On Environmental Impact Assessment", should have been formulated, with clear references to standards and norms on the basis of which an environmental impact assessment should be carried out. Such a chapter should have pointed out the concrete normative documents for environmental quality.

Thus the vagueness of policy in the area of state standards and norms for environmental quality lays the ground for an environmental and economic conflict. This conflict is exacerbated by difficulties linked to the organizational reconstruction of environmental quality monitoring and to legally including a mechanism for payment and fines, thereby facilitating the prevention of and compensation for environmental damage (34).

Until recently, characteristic of all former socialist countries, monitoring was carried out by various departments, was poorly coordinated and required great financial expenditure (35). The American firm SAIC (Science Application International Corporation) along with the MEB organized a working group and in 1996, developed the "Unified State System of Environmental Monitoring" for Kazakhstan, which provided a detailed picture of the goals, aims, category and type of monitoring (36). The reasons mentioned also predetermined the point of view from which the issue of monitoring was examined in the draft law "On Environmental Protection". However, lawmakers made poor use of the "Unified State System of Environmental Monitoring" when discussing the draft law, and therefore, the question of monitoring was given a modest place in the draft which was passed by the Mazhilis March 12, 1997.

The concept of monitoring was formulated in different ways in various versions of the draft law and differed from the concept set in the "Unified State System of Environmental Monitoring". There, the concept was formulated in the following manner: "to increase the effectiveness of environmental protection activity and protection of natural resources through a unified system of sampling, analysis, evaluation and assuring information on environmental conditions". In the Senate version the concept was formulated as follows: "environmental monitoring is carried out with the aim of guaranteeing administrative and executive decision-making in the area of environmental protection and natural resource use" (37). In these formulations, the issue of using natural resources is overlooked. Even in the law "On Oil", the concept of monitoring appears more friendly toward nature than in the 1997 Law. In Article 48, "Monitoring", it is stated that "A system should be created for obtaining rapid, complex information on changes taking place in the environment and the nature of the impact current economic activity has on it..., with the aim of taking steps for eliminating and reducing the negative impact on the environment and guaranteeing the environmentally secure conduct of oil operations".

Considering that the public generally mistrusts official information, legal bases for independent monitoring should have been set in the article. The chapter of the draft law on "Environmental Monitoring" does not positively deny the rights of other entities to carry out monitoring and even obliges natural resource users to do so (38). Still, the attempt at hearings on the draft law in the Mazhilis to officially fix rights to independent monitoring "for private firms and public associations" was rejected in the Mazhilis under the supposition that the results of private monitoring would be of dubious quality and legal character (39). By the same token, one might say that any private business would be of doubtful quality and legal character! Attempts to more clearly define monitoring bodies were rejected, including monitoring the status of the population's health.

In practice, this means preservation of the State monopoly and the creation of a commercial monopoly on collecting and distributing information on environmental conditions. This takes on a non-democratic shade under conditions of mass privatization of industry, especially the mining industry, and creates the potential for all possible infringements, such as with distortion and concealing information. The Law of the Republic of Kazakhstan "On Protecting State Secrets of the Republic of Kazakhstan" stipulates in Article 4 limits on restricting information in

the event that such restriction leads to distortion of "the state of affairs in the area of public health, education, agriculture, internal and external trade, the environment and use of natural resources...".

4. Accountability

In connection with the already mentioned massive environmental violations, the principle of accountability for destruction, pollution, environmental depletion, and breaking environmental protection laws takes on special importance in legislation.

A Senate edict introduced into the draft law the principle of accountability for environmental violations (which had been rejected earlier by the Mazhilis) and a series of additions was made regarding the types of infringements. However, both the developers and lawmakers repeated the fundamental mistakes of the developers of the 1991 Law in the three main laws examined during 1996-1997.

The core of discussion on principles of accountability in 1991 consisted, first of all, of the power structures of the former USSR – on which depended the ratification and agreement of resolutions. These power structures were actually able to ignore the opinion of specialists and force upon them their own opinion and will, using the so-called "telephone right",* thereby escaping accountability. This led finally to serious environmental catastrophes with the sacrifice of human lives in the Amlaty oblast during 1988-1989.

However, in the 1991 Law, no mechanism was set that guaranteed implementation of the principle of responsibility. The amendments introduced by the working group of the Supreme Soviet, which provided for accountability from all enforcement officials as well as those responsible for passing resolutions – including accountability of all branches of authority – were rejected. As a result, a round-about formulation made its way into the 1991 Law: "officials and citizens, guilty..." theoretically including also the highest officials responsible for passing resolutions. But further on in the article, the list of violations for which the guilty bear accountability included violations exclusively of physical nature, and did not include violations connected with government officials passing resolutions or issuing permission to one or another business (Article 71, 73).

Second, although the draft of the 1997 Law did include new types accountability – such as licensing, environmental impact assessments and others – the list of violations again did not include those linked with the passage of resolutions – i.e., upper tier of officials making decisions again

bore no responsibility for environmental crimes (40). Moreover, the Senate removed articles from the draft law relating to accountability. Instead, an article was included where reference was made to the fact that the guilty bear responsibility in accordance with the Civil and Criminal Codex of the Republic of Kazakhstan without any references to exact articles of law (41).

Third, the new laws and bills again ended up weakly linked with the Criminal Code. For example, the list of types of violations covering an environmental impact assessment and Article 39 of the law "On Environmental Impact Assessment", do not correspond to the list of violations in the Criminal Code of the Republic of Kazakhstan (Article 277-294). In other words, the 1991 situation was repeated. The law was pre-sentenced to become an ineffectual weapon of environmental defense.

Fourth, the degree of accountability for a number of violations has occasioned bewilderment. Thus, the press continually reports on the lack of information on environmental aspects of foreign business activities in Kazakhstan, large-scale industrial enterprises, atomic energy development plans, and so on. At the same time, in the draft of the 1997 Law, only administrative punishment for concealing and failing to present timely information is stipulated. But the 1997 Law speaks only of the fact that "untimely presentation or presentation of patently false information by officials is not allowed...", and illegal restriction of information is generally not mentioned (Article 71). At the same time, the law "On Protecting State Secrets of the Republic of Kazakhstan" provides for criminal and administrative responsibility for "illegal restriction of information" (Article 18), which, needless to say, differs significantly from "untimely presentation" or presentation of false information – but leads to the very same severe consequences.

As the experience of two large-scale catastrophes in the Almaty oblast during 1988-1989 has shown, a lack of information can lead to accidents and people's deaths. World experience also supports the requirement for broadened access for the population and society to information (42). In connection with this, a difficult issue arises: how does one explain the trivial amount of accountability regarding information manipulation? Perhaps by noting first, that basic information – as before – lies in governmental hands, and second, in the hands of commercial structures.

Finally, in the drafts and the Law of 1997 it is stipulated that all information concerning environment is not secret and must be published in mass media (Article 71).

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* So-called "telephone right" – illegal way of decision-making and management that was wide-spread in former USSR.

CHAPTER 4

LEGISLATIVE REFORM AND ENVIRONMENTAL POLICY

The current strategy for economic development cannot help but affect the environmental policy (policy in the narrow sense of the word here and below means the officially developed, supported and implemented system of principles and plans for any undertakings, officially formulated in documentation; policy in the broad sense means the actual activity of the government on issues of interdependence between nature and society).

1. Environmental Policy and the 1991 Law

The issue of environmental policy was first raised during the development of the 1991 Law and since then, has remained a most important and unresolved conceptual problem. Amendments introduced into one version of the draft law of 1991 that were supposed to guide the government's environmental defense policy were rejected without any particular basis. But the notion of "environmental policy" itself is found in the 1991 Law (1). In order to organize the government's activity in the environmental sphere, Article 6 was introduced into the 1991 Law. Article 6 proposed the development and implementation of a "state environmental program for Kazakhstan SSR". The system for developing environmental programs was determined by the Cabinet of Ministries. By authority of the Supreme Soviet, a "definition of State policy" was introduced (2). The value of this general formulation was not really explained, although it was more of a policy in the broad sense of the word than a definitive support system of principles and measures.

Local Councils of People's Deputies were supposed to "ensure the implementation of environmental policy and programs" (3). The "implementation of a single state scientific-technological policy in the environmental sphere" (4) was developed by the authority of the State Committee on the Environment and Natural Resource Use (which became the Ministry of the Environment and Bioresources by an edict of the President February 7, 1992). The law did not define the relationship between the "state environmental program", "environmental policy", and "state scientific-technological policy", and it did not determine who was responsible for developing environmental and scientific-technological policy. It is not clear from the 1991 Law whether these are three separate

sectors of state activity or subdivisions of one form of activity spread across corresponding branches of authority. Proceeding from the logic of the points explained in the text of the law, the second variant seems more preferable, but the reason why lawmakers gave environmental programs whose development fell under the competency of the Cabinet of Ministries (Article 11) a front-row status in the 1991 Law remains unfathomable.

There are several reasons for such a decision. First, it is likely that there was poor knowledge on the part of the 1991 Law's developers regarding the goals and aims of environmental policy and weak familiarity with international documents (in particular, with the 1987 report of the Brundtland Commission). Second, there was the lasting inertia of passing resolutions that had existed in the USSR, in which any political resolutions were the prerogative of Party and Union (Central) organs. Finally, the predominance of old conceptual approaches to environmental problems, which viewed the latter as an object of economic activity and a source of natural resources for economic growth. As a result the development of environmental programs was turned over to an executive organ, and the Supreme Soviet defined only some of the political aspects of environmental protection. Moreover, a unified environmental policy under conditions in the USSR would have led to strengthening centralized control over resources, which would have contradicted the departmental interests of the ministries involved in the exploitation of natural resources. One telling point in connection with this was the fact that the jurisdiction of the State Committee on the Environment and Natural Resource Use did not directly include the development of environmental policy and programs. The Committee was given the authority of "institutional management, oversight and control over the activities of ministries, departments, businesses, institutes and organizations in the area of environmental protection" (Article 12.1).

Thus, the 1991 Law set forth legal uncertainty not only in environmental policy, but also in the preparation and implementation of long-term programs and projects, due to the potential for conflict between different ministries in environmental protection activities. By virtue of the inability to develop a unified environmental policy, republic-wide environmental protection measures took the form of separate, specially-targeted and regional programs, aimed, first of all, at protecting separate types of resources and rational resource use.

By the end of 1993, the State Committee of the Republic of Kazakhstan for the Environment, under the President, raised the question of developing a unified State environmental policy, noting that in the serious environmental and economic situation that had come about, it

was impossible "to rely on the standard solutions and the usual patchwork method". "Taking this into consideration, the steps for environmental improvement and prevention of future environmental pollution must bear the mark of a State environmental policy" (5).

At the beginning of 1994, the MEB sent the draft "Basis for a State Environmental Policy for the Kazakhstan Republic" to the Cabinet of Ministries. The document represented a very high-level draft of the foundation of a state policy and steps for its implementation, at the basis of which lay the traditional concept of environmental protection in a somewhat updated form. The document was presented to the ministries and departments for a vote. The Ministry of the Economy spoke out in favor of expediency under developing market conditions and the crisis state of the economy, and for "preliminarily evaluating the cost for implementing the proposed state policy", and in particular, the cost of developing complex territorial frameworks for environmental preservation, providing information, environmental monitoring, scientific support and international cooperation (6).

This proposal by the Ministry of the Economy represents a wonderful example of something not so obvious, but very important: that the principle of residual financing determines the formulation of environmental policy and legislation. Reference to the lack of finances allows environmental problems to be moved to the background using an economic policy traditionally focused on economic growth. The dominant factor here is the policy of the Ministry of Finance and the Ministry of the Economy, and not the public demand for overcoming an extremely acute environmental crisis. On the whole such an approach is convenient for businesses as well, since it allows for a significant reduction in environmental regulations on business activity or simply lays regulations aside. This precisely explains the attempt of the Mazhilis Committee on Issues of the Environment and Natural Resource Use to reject amendments to the draft law "On Environmental Protection", which concerned environmental monitoring. For the very same reason, in one of the first variants of the draft law "On Specially Protected Natural Territories", the scientific-research status of nature preserves was excluded and for the very same reason international conventions on environmental protection signed by the Republic were not fulfilled. In other words, by manipulating the financial deficit, the Government exerted pressure on Parliament resolutions. And although the concrete proposal by the Ministry of the Economy was rejected this does not change the fundamental basic tendency (7).

In July 1994, the issue of environmental policy was raised again in the "Program for Government Action on Deepening Reform and Moving Out of the Economic Crisis". In section two of the Program "The Goals and Aims of Hastening and Deepening Reform", it is noted that "expanding social and environmental policy" must be looked at "as a goal, and not a means for implementing economic reforms". Thus, once more the government ostensibly underscored the point that resolving economic problems at the cost of worsening the social-environmental situation was unacceptable (8).

In Section XIII, titled "Environmental Policy", it is stated that during the development and implementation of environmental policy, the government must proceed from the point "that the goal of the policy is to achieve and sustain a living environment that is favorable for the individual based on a combination of society's environmental and economic interests". The policy is refered to in the future tense. The basic goals of the policy are formulated in the following way: "to create a system of environmental legislation... to develop and introduce a system of managing natural resource use based on norms for geographic territories"; and, "to put in place a unified system of environmental oversight". There is no mention of the "Basis of State Environmental Policy", which once again underscores that at the time the "Program for Governmental Action" was published, the document was not officially accepted. In the summer of 1995, the document was reviewed by the Prime Minister, but it was not approved. From 1995 on, the document did not move and until the development of the bill "On Environmental Protection", the issue of environmental policy was not significantly raised at an official level. At the same time, more attention was being paid to the National Plan of Action for Environmental Protection, as we will see in section three.

2. State Environmental Programs

Parallel to the development of environmental policy, the MEB along with a number of other environmental protection institutions developed governmental programs. The first notable reaction to the changing situation and to the signing of the 1992 Rio De Janeiro Declaration was the draft "National Program for Rational Natural Resource Use", developed by the MEB in 1993, completed with corrections and additions by other ministries. The draft was developed in fulfillment of an edict of the President on May 15, 1992, entitled "On Steps for Implementing the Strategy and Development of Kazakhstan as a Sovereign State". At the heart of the program, as the developers noted, lay the principles of the Rio De Janeiro conference. The priority area of the draft program was

defined as "the protection of the natural system that makes human life viable". In the opinion of the draft program's developers, the approaches set forth in the draft allowed for "the gradual transition to a system of limited, rational use of natural resources and the creation of environmental-economic systems fully balanced with regard to the territory and resources" (9).

In the introductory portion of the document, there is an analysis of the impact of the industrial complex of Kazakhstan on the environment. At the end, the conclusion is drawn that the environmental situation can be characterized as critical. Next follows a study of the basic tendencies of natural resource use and the system for managing such use. The program's developers launched an attempt to tie the environmental issues of natural resource use in with the latest environmental tendencies of world practice. Nevertheless, the draft was aimed at resolving issues of resource use and only tangentially touched upon other aspects of environmental policy.

The aim of the program to frame "an environmental - economic system - natural conservation, economic limitation and a technological advances - a comfortable living environment" plainly contradicted the deepening economic situation and ever-greater orientation of the government toward increased exploitation of natural resources (10). The ministries taking part in large-scale natural resource use also saw the program as more of an obstacle than a useful beginning. As a result, in 1993, the draft was ignored by a number of ministries, something even the plan's developers recognized. "It must be noted, that the ministries and departments using Kazakhstan's resources have not offered any proposals for rational natural resource use and, judging from several branch studies, are striving only toward an unlimited increase in their industrial might" (11).

Still, the draft was approved by the MEB and sent for review to the Cabinet of Ministries and the State Council of the Republic of Kazakhstan on the Environment. The draft moved no further. Here, practice revealed first, the MEB's weak position and authority, and second, the inconsistency of governmental actions in the current process. This serves as a good illustration of the conclusions of the Lucerne Conference, where it was noted that "central ministries and departments for environmental protection in Central and Easter Europe typically are ignored by the central governments" (12).

1994 marked the beginning of a variety international assistance for the Republic in the area of environmental protection, including the development of programs for environmental protection. In Almaty that

year, a regional seminar was held on "Preserving Biological Diversity in Central Asia". After the seminar, proposals were submitted to the Global Environmental Fund for review: one for protecting biological diversity of the Caspian Sea (proposed by the MEB); one for protecting the biological diversity of Central Asian birds (proposed by the Kazakhstan-Central Asian Zoological Society); the Caspian Initiative (proposed by the UN Development Program, UN Environmental Program and World Bank); and proposals for a technical mission to develop a National Strategy for Preserving Biological Diversity". In April 1995, a briefing was held with the participation of non-governmental and state structures, dedicated to developing a National Strategy for Preserving Biodiversity (13). A little later the Kazakhstan Government together with a UN representative prepared the draft "Aid to the Government of Kazakhstan for Developing a National Strategy and Action Plan for Introducing the Convention on Biological Diversity". Financing for the project was supplied by the Global Environmental Fund and the UN Development Program (14).

In 1996 and 1997, with assistance from the international community and partly with its financial support (in particular from the World Bank and the Global Environmental Fund) a National Strategy and Plan of Action for Preserving and Balancing the Use of Biodiversity, a Preliminary Plan of Action, and then a National Plan of Action for Combating Desertification were developed and, the inter-republic project "Preserving the Biodiversity of Western Tian-Shian" and other programs and projects were introduced.

From these examples, the government obviously lacks a clear, conceptual approach to environmental issues and the MEB lacks a mechanism to fundamentally impact the resolution of environmental issues. The programs, although possessing an indisputable timeliness, are nonetheless focused on narrow problems or represent regional programs. The appearance of successive programs raises one and the same issue every time: how the given programs are tied to the environmental policy of the Republic and on which legal basis they rely in the absence of a developed environmental policy and the incomplete system of environmental legislation still in a formative stage. Officials partly acknowledge the inconsistency of their actions noting that the complexity of environmental problems and their interconnection with other problems "gives rise to the need for developing a national strategy". The opinion has been voiced that the basis for such a strategy should be the National Plan of Action for Environmental Protection (discussed in section three) (15). In addition, there is indirect

recognition of the fact that previous attempts to develop a unified environmental policy have not been successful.

3. The National Plan of Action for Environmental Protection

On April 14, 1995, the Minister of the Environment and Bioresources addressed representatives of the UN Development Program "with a request for cooperation in developing a national definition of sustainable development", and substantiated "the need for forming a National Plan of Action for Environmental Protection based on the ideas and principles laid out in Rio De Janeiro (1992) and in Lucerne (1993)" (16). During 1995, a series of international, republican and regional seminars, symposiums and conferences took place directly or indirectly touching upon the issue of a National Plan of Action for Environmental Protection and sustainable development. The main outcomes of these undertakings was a Public Coordinated Working Group (created on the basis of recommendations from the seminars) under the Cabinet of Ministries (KRG) which was tasked with "creating the National Plan of Action for Environmental Protection and Strategies for Sustainable Development". Furthermore, the Cabinet of Ministries was commissioned "to give assistance in developing" these documents for all ministries and departments. In December 1995, the Government, together with the UN Program for Development prepared a draft of the Government's "Plan of Action for Environmental Protection for Sustainable Development in the Republic of Kazakhstan (National Agenda for the 21st Century)". During the initial preparatory phase of the plan (from December 1995 - February 1996) it was proposed that "conditions be prepared for developing the National Plan of Action for Environmental Protection" (17).

However, such actions were not the first official stipulations for developing a National Plan of Action. In 1994, the State Scientific-Industrial Association for Industrial Ecology "Kazmekhandobr" with participation of MEB specialists and a number of scientific research and design institutes prepared a "National Plan of Action for Environmental Protection", which bore a different acronym than the later National Plan of Action. The earlier National Plan of Action was supposed to "define the goals and detail the system of steps aimed at implementing a State policy in the environmental area" (18). Thus, the plan's developers tried to establish a definite relationship between environmental policy and a national plan of action in the environmental area. The fate of the plan turned out to be the same as two other documents developed by the MEB

and the "Kazamekhanobr" (the "Basis for a State Environmental Policy" and the "National Program for Rational Natural Resource Use") – it, too, was shelved. Thus, the MEB's attempts to begin a process for developing an environmental policy and national programs using the power of the Ministry and a number of specialized organizations were reduced to practically nothing.

In 1995, due to expanding international cooperation in the area of environmental protection and intensification of environment decline as a whole, a new stimulus appeared for developing an environmental policy and national programs. The MEB request (mentioned above) to the UN Program for Development for assistance in developing a national concept of sustainable development marked a sharp reversal in the orientation of the MEB from relying on its own forces to receiving outside assistance. Chronologically, this even predated the submission of the "Basis for a State Environmental Policy" for review to the Office of the Prime Minister, where it was registered June 26, 1995. It is interesting that this document was not mentioned in the MEB's address to the UN Project for Development.

Somewhat later in a letter to the Cabinet of Ministries, the MEB practically renounced the completed work, noting "that the experience of environmental modernization in the countries of Central and Eastern Europe has illustrated the ineffectiveness and the impracticality of all-encompassing environmental programs". Therefore, we must change to a new form, such as the National Plan of Action for Environmental Protection! And here again there is clearly an odd silence regarding the fact that the draft of such a plan was prepared by the MEB a year earlier. On the other hand, it is pointed out that the first republican seminar – "A National Plan of Action for Environmental Protection and Sustainable Development"– which took place in Almaty July 12-14, 1995, "recommended the start for developing the concept of sustainable development and a National Plan of Action for Environmental Protection" (19). According to the MEB, it was mandatory that the broadest community, all interested departments and circles, be drawn into the process, the goal being broadening participation in the process of developing the National Plan of Action for Environmental Protection and overcoming the "institutionalized approach to resolving national problems" (20).

However, financial reasons, to no small degree, provided grounds for an abrupt turnabout and self-criticism. The previous work of the MEB and its subdivisions on the National Plan were financed out of budget

resources. In 1995, work on the National Plan began to be financed from other sources as well. All expenditures from the preparatory phase were covered by the UN Program for Development, but the Committee for the Use of Foreign Capital of the Ministry of Finance (not the MEB) became the "cooperative entity from the government" for the given project (21).

Yet another reason for a change in the MEB's orientation was the opportunity to receive financial support to create a new structure for developing a National Plan of Action for Environmental Protection. This new structure was defined as "support for the government's contribution in creating a National Plan of Action for Environmental Protection and the creation of a basic structure for its implementation; for example, the creation of an inter-departmental (or inter-ministry) committee with an executive center in its ranks" (22).

So another beginning was established for creating another structure, the justification for which never even come under doubt, in spite of the extreme financial deficit. Again hopes were placed on foreign assistance-especially on the fact that the World Bank "encourages and supports the efforts of government-debtors to prepare and implement a National Plan of Action for Environmental Protection and its periodic review". In actuality, the MEB was pushed into the background in the area of developing an environmental policy and programs, and its specialized divisions were moved to an even less noticeable place in the given draft.

On November 12, 1996, in Almaty, a republican conference was held, entitled "The Problems, Priorities and Partnership of the National Plan of Action for Environmental Protection for Sustainable Development", which was the final step of the preparatory phase of work on the National Plan of Action for Environmental Protection. The Conference summed up the results of the preparatory work contained in 15 seminars and conferences, the creation of an information system, a partnership start-up and exchange of experience (23). According to the practical results, the work bore a definite ideological imprint. For instance, in text of a report thesis, one may come across the stamp of typical Soviet ideologies characterizing the results of the preparatory phase work. For instance "from the point Kazakhstan gained its sovereignty, it has shown itself to be a leader of sustainable development policy" or "the process of the National Plan of Action for Environmental Protection and Sustainable Development in Kazakhstan from the start has generated an entire series of advantages" (24).

While summing up the results of the preparatory phase, the Conference also approved a "Work Program for 1997", which then was

"reviewed by the Government and sent for implementation to all the central and local organs of governing" (25). "The current program has received the support of international organizations, including the World Bank". Since the beginning of 1997, the Center for a National Plan of Action for Environmental Protection and Sustainable Development – which was created as a "special structure" under the MEB, has carried out work for the "systematization and analysis of environmental problems with the aim of bringing forth and developing ways for resolving those problems of the greatest priority" (26).

In July 1997, a seminar was held, "Establishing Priority Environmental Problems of the Republic of Kazakhstan". Among the seminar's resolutions it is pointed out that an account of the priority environmental problems "is required for developing a long-term strategy for the Republic of Kazakhstan and steps for their resolution are important for effectively planning environmental protection policy with limited resources" (Point 6). However, the resolutions contain no clear answers to the questions: Who develops environmental policy and does a unified environmental policy exist in the Republic? What sort of legal status is there for environmental policy and programs? How does the National Plan of Action for Environmental Protection correspond to strategies for sustainable development and with other programs and environmental policies?

The impression is that at the Center for a National Plan of Action for Environmental Protection and Sustainable Development, conceptual issues currently remain unresolved. Having seized the initiative regarding the process of developing the Plan, the Center for a National Plan vaguely presents direction for activities, while trying to define them literally by feeling its way along. The leading structural divisions of the MEB have been formally included in the process, which creates misunderstanding between those developing the National Plan and the MEB.

4. Environmental Policy and New Legislation

An attempt to introduce into the 1997 Law "On Environmental Protection" a point about the fact that the State, in its environmental activities, must run State policy, did not meet with success: legislators stubbornly rejected the point. But in the text of the Law, in the chapter that determines the competency of organs of state authority and local government, it is pointed out that the Government of the Republic of Kazakhstan "develops the basic directions of state policy, strategic and tactical steps for its implementation; develops national (State) environmental programs and programs for various types of natural

resource use and presents them to the President for ratification" (27). This formulation essentially introduces nothing new in comparison with the 1991 Law, where the functions of the Supreme Soviet included "defining State policy" (Article 9). Years of practice with environmental protection measures has shown the value of such a general formulation.

According to the 1997 Law, the MEB "carries out a unified policy in the area of environmental protection" (Article 8) and "organizes the implementation of national (State) environmental programs". This point was ratified virtually without comment. Nothing is mentioned in the 1997 Law regarding the National Plan of Action, although there is mention of a much less definitive notion of "sustainable development". Logically, the National Plan of Action should clearly be grouped with the 1997 Law's environmental programs. However, according to a statute the MEB passed on November 14, 1996, the goals of the MEB appear somewhat broader than in the 1997 Law.

According to the statute, the first goal of the ministry is "developing a single state policy in the area of environmental protection and use of natural resources" (28). However, in the statute there is also nothing said about the National Plan of Action for Environmental Protection, although work on it was being carried out at the Center for a National Plan of Action for Environmental Protection, which, since 1997, has been a "special structure" under the MEB with subdivisions in all oblasts of Kazakhstan, and the Plan of Action for Environmental Protection is generally accepted as an international document recommended for development and ratification (29). The statute notes that resolutions of the MEB are "passed within the limits of its competence and are mandatory for implementation by all ministries" and other organizations, and thus a significant number of people are included in the work (30).

The aforementioned articles of the 1997 Law clearly demonstrate the very modest role of the President of the Republic and the Parliament in defining environmental policy – and once more underscore how lawmakers have given environmental problems secondary importance. Statutes of the Model Law on a National Environmental Council were rejected – a council whose functions included making recommendations to the Government, preparation of reports on environmental conditions and on environmental policy for the Government and Parliament, and consultation for preparing a State strategy on the environment. According to the recommendations of the Model Law the president and vice-president were supposed to be part of the Council (31).

U.S. experience was rejected, in which according to the "National Environmental Policy Act of 1969", a Council for Environmental Quality was created; Russia's experience, in which the Coordinated Council for Environmental Policy was created under the President of the Russian Federation was also rejected (32). Moreover, in 1995, the Republic of Kazakhstan State Environmental Council was abolished. Thus, the limited authority of the Parliament and President in the new1997 Law defined environmental policy at the level of separate measures by executive organs thereby lowering the status of environmental problems and transferring broad authority regarding the environment to the executive organs.

D.L. Baideldinov has spoken out against such belittling of environmental problems and, consequently, the role of the MEB. He believes that the MEB should be "the coordinating organ for ministries engaged in the use of environmental resources", and should be subordinate "not to the State, but directly to Parliament" (33). Of course, such a system would elevate the role of the MEB and the role of Parliament in resolving environmental problems, and especially in carrying out environmental policy.

5. Environmental Policy and the Role of the Public

The international community directs ever-increasing attention to public participation in the discussion and resolution of environmental issues, including legal and strategic environmental protection questions. Ostensibly this means the public's impact on formulating environmental policy and its implementation is expanding. New Kazakhstan legislation was developed by taking world tendencies into account. All bills presented to Parliament had sections on public participation. There are special chapters in the laws: in the law "On Environmental Protection" – Chapter II "The Rights and Duties of Citizens and Public Associations in the Area of Environmental Protection"; in the law "On Environmental Impact Assessment" – Chapter 4 "The Public Environmental Impact Assessment"; in the law "On Specially Protected Natural Territories" – Chapter II "The Rights and Duties of Citizens and Public Associations in Specially Protected Natural Territories"; and, Article 82 "Public Oversight of Specially Protected Natural Territories".

However, in reality the new legislation has not broadened the opportunity for citizens and NGOs to influence environmental policy, the passage of resolutions or legal protection of the environment. According to the 1991 Law, every citizen has the right to participate in "the discussion of draft laws and other normative acts" (Article 7.1). From

the text of the law, it is not at all clear whether public associations had the same right (Article 7.2, 62.1). In the 1997 Law, this right was left only to NGOs (Article 6.1).

In both laws, the right to legal protection is stipulated. Citizens can demand through "administrative or judicial means" technical improvements of a businesses and the suspension or cessation of industrial activities, "which have a harmful effect on the environment and human health" (according to the 1991 Law, NGOs did not have this right). At the same time, citizens and NGOs can file suit only for "compensation for damage done to their [citizen's – S. K.] health and property". According to both laws (the 1991 Law: Article 7.1 and Article 62.1; the 1997 Law: Article 5.2 and Article 6.1) citizens and NGOs do not have the right to file suit for compensation for damage done to the general quality of the environment. From the logic of both laws, it follows that only officials have the right to file suit for compensation for damage done to the general quality of the environment. While according to the law "On Specially Protected Natural Territories", citizens do not have such rights (Article 6.1), NGOs have the right to file suit for compensation for "harm done to citizens", – but exactly what sort of harm – to property or health – is not defined (Article 7.1). So a paradoxical situation arises: citizens and NGOs engaged in protecting the environment do not have the right to file suit demanding remuneration for damage done to the general quality of the environment!

One point of the bill "On Environmental Impact Assessment" has raised the greatest number of objections and protests from the public. The bill proposed that a public environmental impact assessment should be only of "an informational and suggestive nature" (thus not legally binding), which effectively prevents any impact on the passage of resolutions and "the implementation of environmental policy" (34). A counter proposal put forth by NGO representatives proposed that a public environmental impact assessments be carried out using the same regulations required for a governmental environmental impact assessments. Assessment results, following acceptance by the MEB, would then become mandatory for implementation by all legal entities and individuals, just like the results and conclusions of a state environmental impact assessment (35).

However, the proposal for equal legal status for public and governmental environmental impact assessments was rejected in the text of the law (36). In light of the unequal legal status of governmental and public environmental impact assessments, the requirement to obtain a license and registration to conduct public environmental impact

assessments appears especially odd. In other words, while effectively setting identical legal requirements for conducting a governmental or public environmental impact assessment, lawmakers have refused to admit equal legal status regarding the results and conclusions of both types of assessments. Public organizations carrying out a public environmental impact assessment are put in an unequal position compared to analogous governmental organizations. In addition, carrying out an environmental impact assessment is made difficult by the fact that financing for a public assessment "must come from the resources of public environmental groups and funds, or from public sources". Accordingly, the very same reason will also make it more difficult to obtain licenses for carrying out an environmental impact assessment (37). In this respect, the 1997 Law represents a step backward in comparison with the Law of 1991, which states that a public environmental impact assessment "becomes legally binding upon approval of its results by the organs of the State Committee of Kazakh SSR on the Environment and Natural Resource Use" (Article 40.1).

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2. Zakon Kazakhskoi SSR ob okhrane okruzhaiushchei prirodnoi sredy v Kazakhskoi SSR. - Almaty, 1991. - St. 9.
3. Ibid., st. 10.
4. Ibid., st. 12.
5. O gosudarstvennoi ekologicheskoi politike Respubliki Kazakhstan. Gosudarstvennyi Sovet Respubliki Kazakhstan po ekologii. 14 dekabria 1993 goda. - S. 3.
6. Osnovy gosudarstvennoi ekologicheskoi politiki Respubliki Kazakhstan. Proekt. MEB. - Almaty, 1994. - S.28.
7. Ibid..
8. Programma deistvii Pravitel'stva po uglubleniiu reform I vykhodu iz ekonomisheskogo krizisa // Kazakhstanskaia pravda. - 1994. - 29 iulia. - Razdel II.2.2.
9. Natsional'naia programma ratsional'nogo prirodopol'zovaniia. Proekt. (Vtoroi variant). MEB. - Almaty, 1993. - S.3.
10. Ibid., s. 20.
11. Ibid., s. 6.
12. Programma deistvii po okhrane okruzhaiushchei sredy dlia Tsentral'noi i Vostochnoi Evropy. 1995. - S. 44.

13. Kazakhstan. Otchet po chelovecheskomu razvitiiu 1995. UNDP. - Almaty, 1995. - S. 46.
14. Kazakhstan. Otchet po chelovecheskomu razvitiiu 1996. UNDP. - Almaty, 1996. - S. 100.
15. Ibid..
16. Plan deistvii po okhrane okruzhaiushch sredy dlia ustoichivogo razvitiia v Respublike Kazakhstan (Natsional'naia povestka dnia na XXI vek). Proekt Pravitels'tva. UNDP. - Almaty, 1995. - S. 4.
17. Ibid..
18. Natsional'naia programma po okhrane okruzhaiushchei prirodnoi sredy Respubliki Kazakhstan. Proekt. (Pervoi variant proekta). - Almaty, 1994. - S. 3.
19. Pis'mo MEB v Kabinet Ministrov ot 25 iuliia 1995 N6-1-401/1568.
20. Ibid..
21. Plan deistvii po okhrane okruzhaiushch sredy dlia ustoichivogo razvitiia v Respublike Kazakhstan (Natsional'naia povestka dnia na XXI vek), s. 7.
22. Ibid., s. 6.
23. Respublikanskaia konferentsiia "Problemy, prioritety i partnerstvo natsional'nogo plana deistvii po okhrane okruzhaiushchei sredy dlia ustoichivogo razvitiia". - Almaty, 1996. - S. 23.
24. Ibid., s. 21, 23.
25. Natsional'nyi plan deistvii po okhrane okruzhaiushchei sredy dlia ustoichivogo razvitiia. Prospekt (bez daty).
26. Ibid..
27. Zakon Respubliki Kazakhstan "Ob okhrane okruzhaiushchei sredy". - Almaty, 1997. - St. 7.
28. Postanovlenie Pravitel'stva Respubliki Kazakhstan "Ob utverzhdenii Polozheniia o Ministerstve ekologii i bioresursov Respubliki Kazakhstan". N1385, 14 noiabra 1996 goda. - P. 6.
29. Natsional'nyi plan deistvii po okhrane okruzhaiushchei sredy dlia ustoichivogo razvitiia. Prospekt (bez daty).
30. Postanovlenie Pravitel'stva Respubliki Kazakhstan "Ob utverzhdenii Polozheniia o Ministerstve ekologii i bioresursov Respubliki Kazakhstan", P. 5.
31. Model'nyi zakon "Ob okhrane okruzhaiushchei sredy". Sovet Evropy. - Strasburg, 1994. - St. 16.
32. Rossiiskoe zakonodatel'stvo ob okhrane okruzhaiushchei sredy i prirodopol'zovaniii (Sbornik normativnykh aktov). - M., 1993. - T. 1, Ch. 2. - S. 91-92.

33. Baidel'dinov D. L. Ekologicheskii kodeks - perspektiva ekologicheskogo zakonodatel'stva Kazakhstana // Vestnik "Zelenoe spasenie". - 1996. - Vyp. 5. - S. 16.
34. Panorama. - 1997. - 8 avgusta. - N30.
35. Zakon Respubliki Kazakhstan "Ob ekologicheskoi ekspertize". Proekt ot 27 sentiabria 1996 goda. - St. 12.2.
36. Zakon Respubliki Kazakhstan "Ob ekologicheskoi ekspertize" // Kazakhstanskaia pravda. - 1997. - 21 marta. - St. 29.2.
37. Ibid..

INITIAL RESULTS OF REFORM (INSTEAD OF A CONCLUSION)

A brief analysis of several aspects of legal reforms in the area of environmental legislation and of the three laws enacted in 1997 permits only preliminary conclusions and generalizations. Reform is still far from complete, laws have only just come into effect and the legal, environmental and socio-political situation in the Republic is in flux.

In spite of the complex economic and social-environmental situation, reforms are possible since the circumstances make it possible to create a system of legislation anew. (These circumstances include the under-developed state of the current system, a wealth of available experience from foreign countries, and international consultative and financial support for developing new legislation).

One truly positive result of reform has turned out to be at least an attempt at adapting laws to the market situation and the development of the special laws "On Environmental Impact Assessment" and "On Specially Protected Natural Territories".

Still, the debates in Parliament have shown that deputies are not familiar with environmental problems and that they lack an understanding of the impact of the environmental situation on the social-economic development of Kazakhstan. There is insufficient consultative and informational support for deputies, despite the large amount of work being carried out by the department for legal information of the Informational-Analytical Center of Parliament. The main problem is the lack of qualified personnel for carrying out legal analytical work (1).

At the same time, legal reform has reflected a clash of various points of view. To identify these with the interests of different social groups is difficult, due to the rapidly changing social structure of society, the instability of the groups themselves and the extreme fickleness of interests under conditions where clear social-economic orientations have been lost. However, one may establish the existence of elements lobbying for laws that are clearly present in the examples of Chapter XI "State Nature Preserve Zones", and Article 48 of the law "On Specially Protected Natural Territories". In this case, one sees the interest of oil-mining companies working in the Caspian Sea region and the companies' social group-i.e., the richest part of society.

Under conditions of struggle between various points of view, a fundamental shortcoming of parliamentary procedure in amending

legislation is the depersonalization of introduced amendments. Corrections proposed initially on the behalf of deputies are then inserted by committees, thereby concealing the true political face of the authors of the correction and the public impact on developing legislation. The impression created is that those deputies who voice their own position oppose some anonymous force, which gives the process of the deputies' work a non-democratic character.

In developing laws, deputies, now as in the past, are constrained by a system of residual finance laws. Here, we again run into a determination of the degree of requirement of one or another piece of legislation. If the legislation is mandatory, then the government should provide financing and not use a financial deficit as a means for pressuring parliamentarians. The case of the law "On Environmental Protection" is a glaring example of financial excess (over 30 variations of the draft) and financial blackmail of deputies (references to the impossibility of finding money for monitoring), with the requirement for developing a new law remaining in doubt.

In conceptual respects, the old approach to resolving environmental problems continues to dominate – an approach that gives such problems secondary significance in comparison with economic and social problems. This is the case in spite of declarations at the highest level of an orientation toward sustainable development and initial official steps in this direction. As before, there is no clear link to be seen between constitutional duties taken on by the government where the environment is concerned, and the implementation of environmental policy and environmental legislative activity. This situation results in weak environmental policy being carried out, and the contradictory and illogical nature of government actions. While declaring environmental priorities, the government orients the economy toward increased exploitation of natural resources in its actions.

This obviously can be explained also by the fact that at the highest echelons of power, there is waning interest in environmental problems. This was reflected in the law "On Environmental Protection", where the role of the President was reduced merely to supporting "national (State) environmental programs and programs for various types of natural resource use". According to the 1997 Law, the President has no direct involvement with the country's environmental policy, which is transferred to the State for management (the 1997 Law, Article 7) – an example of ignoring the recommendations of the Model Law On Environmental Protection and international experience. The very same tendency can be seen in the implementation of international conventions. For example,

having signed the 1994 Convention on the Protection of World Cultural and Natural Heritage, as of 1998, Kazakhstan still had not even presented the Convention Committee a request for inclusion of specific territories in the List of World Heritage. One of the obstacles for implementing the Convention has been the debt owed to the World Heritage Fund for 1995, and 1996, in the amount of $15,663, which was not fully paid until the beginning of 1997 (2).

In approaches to solving environmental problems, traditional economic ideas on the aims of economic development, which to a significant degree have seemed reasonable in a society with a planned and market economy, play no small role. "Having entered into a market-oriented economy, we now view people as human capital, which facilitates an increase in material well-being, but we do not value the individual. In either case, nonetheless, the standard for success has been and is still considered to be economic growth..." (3).

The idea of economic growth was one of the chief priorities in the message of the President to the people of Kazakhstan in 1997 (4). The main goals of the National Council for Sustainable Development – a consultative-advisory organ under the President created in the autumn of 1997 – are:

1. "Monitoring the implementation of the Strategy for the Development of the Republic of Kazakhstan Until 2030;
2. Discussing global sustainable development issues;
3. Examining ideas for developing branches, regions, spheres of economic activity and issues of State economic security;
4. Discussing key issues of economic reform and effective use of economic resources, as well as preparing proposals of feasible lines for innovative economic and environmental recommendations..." (5).

As before, these goals came out of the economic priorities that dominate all others. The goals outlined do not clarify the connection between the concept of the sustainable development of Kazakhstan and the Strategy for the Development of the Republic of Kazakhstan 2030; instead, they further cloud the situation. Not one representative of the ministries and departments directly or indirectly involved with protecting or restoring the environment was included in the group comprising the National Council – supported by Edict No.3723. Thus, the question arises as to whether or not this is a substitution for the Agenda for the 21st Century and the concept of sustainable development with the more familiar economic programs slightly altered in the spirit of the times.

The process of discussing draft legislation has shown that many parliamentarians as before, treat the problem of defending individual rights with wariness and misunderstanding. This is the case, despite being unaware fully of the principle of the indivisibility of the rights of the individual, which occasioned arguments on the justness of including in draft bills statutes on defending the rights of the individual to a healthy environment.

The issue of governmental policy in the environmental area has remained inscrutable to the end. Article 8 imposes on the Central Executive Organ carrying out "a unified state policy in the area of environmental protection", but it is not clear who develops state policy, since in Article 7, it is stated that the State "develops basic directions for governmental policy" and that's all. It is not explained in the law what is meant by "basic directions" and by "a unified state policy" and what sort of relationship there is between the two. This situation is of primary importance, because all the legislation in the environmental area – and even the concrete programs and steps – should be built on the basis of state environmental policy that is developed and is the law in effect. The requirement for "creating a strong environmental policy" is again underscored in the Strategy for the Development of the Republic of Kazakhstan Until 2030 (6). But the main goals of the National Council for Sustainable Development, created to regulate the policy's implementation, include nothing on developing the environmental policy of Kazakhstan.

Lawmakers have failed to resolve a number of principal issues on the role of the public in environmental protection – questions that continue to fundamentally hold back public initiative. Two important points are worth noting. First, one of the mechanisms created for preventing or holding environmental damage to a minimum is the state and public environmental impact assessment. According to the 1997 Law, "the result of a public environmental impact assessment bears (only) an informational and suggestive nature". In other words, it does not bear the weight of law (Article 65; the law "On Environmental Impact Assessment" Article 29.2), as it did in the 1991 Law (Article 40.1).

Second, although a great deal of attention is given to the problem of compensation for damage done to the health and property of citizens in the 1997 Law and in the Law "On Specially Protected Natural Territories" (Article 7.1), the right to file suit for environmental damage belongs only to the executive organs of MEB (the 1997 Law, Article 77.2). This is the case even though ostensibly citizens and members of public associations

are given the right to defend the health and the property of citizens through various means and to file suit for damages to citizens' health and property and even though public associations may carry out environmental monitoring (*).

This can be explained by the insufficient development of a mechanism for compensation of environmental damages in legislation. First, the basic principles of environmental protection (the 1997 Law, Article 3) do not include the principle of compensation for environmental damage, although the law "On Specially Protected Natural Territories" does (Article 4). Having excluded this principle from the 1997 Law, lawmakers failed to adhere to it subsequently in their own work on legislation. Second, the result of rejecting the principle of compensation in the 1997 Law was that citizens and public associations were not given the right to demand legal proceedings for environmental damage. Third, from the 1997 Law it is not clear how to compensate for environmental damage done prior to privatization of a specific location (Article 51.3), nor is it clear how to compensate for damage in the case of interference from "an uncontrollable force" (Article 86.2). It is also not clear whether the right to compensation (for damage done) belongs to organizations, institutions, and business that have born the damage as a result of pollution or environmental destruction or that have financed compensation for damages which occurred through the guilt of other legal entities or individuals.

Recognizing specific payments and fees for using natural resources, or for compensating for damage done is no less important. Depending on the delimitation (payment or compensation), the party to receive fees changes. Article 29 of the 1997 Law states: "Payment for environmental pollution beyond set limits is levied at increased rates on the basis of established law" (7). However, there is no stress placed on the fact that "payment for emissions and dumping..." and "waste disposal... is viewed as payment for using natural resources... and is a form of compensation for damage done to the environment through pollution", as is done in Article 26.1 of the 1991 Law "On Environmental Protection". As a result, it is unclear where such payment is to be sent. According to the 1991 Law, payment goes to local environmental protection funds and in the 1997 Law, the payment recipients are not named.

Lawmakers were also unable to fully resolve a number of serious issues linked to responsibility for environmental violations. In the 1997 Law, there is no clear classification for types of environmental violations. In Chapter XVIII, dedicated to "Resolving Desputes in the Area of Environmental Protection and Responsibility for Violating Environmental

Protection Laws", an article on "Types of Violations of Environmental Protection Laws" is missing. In the law "On Environmental Impact Assessment" there is a similar article (Article 39) which undoubtedly is a positive instance of using international experience. The Law "On Environmental Protection" should define, first, the types of environmental legislation violations by legal entities or individuals; second, the types of environmental legislation violations by officials from governmental organs of the executive branch, organs of governmental oversight and organs of local government. The types of environmental violations included in the Criminal Code do not encompass these groups.

From the point of view of protecting the right of the individual, the inevitability of responsibility for environmental violations is important. The case of compensation for damage done to the environment, and human health and property is especially important. The 1991 Law calls for compensation for damage done to "the environment, the health and property of citizens, legal individuals and the national economy... in full measure" (Article 74). The very fact of punishing guilty parties without compensation is a half-hearted measure. On the other hand, even the inevitability of damage compensation is a restraining factor for environmental violations. The 1997 Law changes the formulation by stipulating compensation for environmental damage according to established taxes and methods, or by "actual expenditures for restoring the damaged environment while considering the damage done" (Article 86.1), which better corresponds to a market solution to the problem. Harm to citizens' health and property is compensated, as before, "in full measure" (Article 86.4).

However, only governmental organs specially authorized in the area of environmental protection can demand compensation for environmental damage (Article 77.2). They "have the right" "to define (participate in determining) the scope of the damage borne as a result of legal violations" and to present the perpetrators with claims for compensation or to file suit. But what does "have the right" mean, if filing suit is not part of their duties and depends on their desire to do so? The 1991 Law says that the jurisdiction of such organs includes "guaranteeing the observation of environmental protection laws and application of economic and administrative sanctions for violation" (Article 12.2). The 1997 Law does not explain what sort of role governmental organs specially authorized in the area of environmental protection have in guaranteeing observance of environmental protection legislation (Article 8). Furthermore, according to the Statute on the Ministry of the Environment and Natural Resources, which came into effect November 20, 1997, the State must "guarantee

the observation of environmental legislation" and "take adequate steps for acting against those who violate the laws" (8).

Thus, from the point of view of their effectiveness regarding protection and restoration, an examination of laws passed shows that the problem of inadequate legislation for meeting the requirements of new forms of interaction between nature and society (as defined in Rio-92) has not been resolved in the course of the first stage of legal reform. The key instances of the 1997 Law examined here do not give evidence in favor of this law corresponding more to contemporary approaches in the area of environmental protection. A certain softening of legislation will without a doubt respond better to business interests, but only time will tell if such easing will be an effective instrument for protecting public interests. The inconsistent environmental policy being carried out by the government likewise does not inspire great optimism, even in spite of the increasing volume of foreign assistance regarding environmental protection – which, as their past participation in the development of legislation shows, is not always effective. Finally, the passage of laws, as the experience of recent years demonstrates, does not at all guarantee their strict observation.

The importance of monitoring and oversight for implementing the laws "On Environmental Protection" and "On Specially Protected Natural Territories" is emphasized by the Chair of the Committee on Environmental Issues and Natural Resource Use of the Mazhilis of Parliament, A. Akhmetov, under whose leadership the Committee has discussed and passed the two laws. Akhmetov points to the government's use of resources from the Republican Fund for Environmental Protection in 1996, for purposes other than nature protection and to the repetition of similar practices while preparing the national budget for 1998. Such abuse of Fund moneys contradicts both the old and new laws (9).

In December 1997, the law "On the Republican Budget for 1998" was passed. Once again, in this law, there are provisions for using money going to local environmental protection funds as a source for padding local budgets – which contradicts Article 33.4 of the 1997 Law (10). According to the budget passed, it is not clear which means are to go for environmental protection. Although expenditures for environmental protection are supposed to be placed on "a separate line" in the "budgets of all levels" according to Article 27.2 of the law "On Environmental Protection", in the law on the budget for 1998, these outlays are spread across separate articles, which does not give a solid picture of the size of expenditures for environmental protection.

Such an arbitrary treatment of the law under conditions of a serious economic crisis and current legal paralysis is an entirely typical occurrence.

People are beginning to get used to non-observation of the laws and poor environmental quality as a new type of poverty. It is no surprise that given the situation, the rights of the individual to an environment favorable for living and health has been pushed to the background. The same is true of the principle of the indivisibility of individual rights.

At present, many unresolved environmental protection legislation issues remain. In order to solve them, governmental organs, special departments and institutions, the public and NGOs must focus their efforts. First of all, the environmental policy of Kazakhstan must be developed and legally strengthened. According to recommendations of the CIS Permanent Commission of the Inter-Parliamentary Assembly of Government Participants for Environmental Problems, an Environmental Code must be developed – one that will bring environmental legislation into a unified system (11). The application of such legal mechanisms for protecting the environment, such as the mechanism for damage compensation, environmental monitoring and normalization must be improved. A system that sets responsibility for illegal violations and for ensuring laws are followed must be established. Laws have been passed and the foundation has been laid. Now, we must build upon this foundation to make an active system of environmental legislation.

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2. Otevt Natsional'noi komissii Respubliki Kazakhstan po delam IUNESKO EO "Zelenoe spasenie" ot 18 fevralia 1997 goda.
3. Kazakhstan. Otchet po chelovecheskomu razvitiiu 1995. UNDP. Almaty, 1995. - S. 1.
4. Kazakhstan - 2030. Protsvetanie, bezopasnost' i uluchshenie blagosostoianiia vsekh kazakhstantsev. Poslanie prezidenta strany narodu Kazakhstana // Kazakhstanskaia pravda. - 1997. - 11 oktiabria.
5. Polozhenie O Natsional'nom sovete po ustoichivomu razvitiiu. Utverzhdeno Ukazom Preszidenta Respubliki Kazakhstan ot 3 noiabria 1997 goda N3723.
6. Kazakhstan - 2030. Protsvetanie, bezopasnost' i uluchshenie blagosostoianiia vsekh kazakhstantsev. - S. 18.
7. The laws have many footnotes referencing other laws (there are more than 20 footnotes in the law "On Environmental Protection" alone), without noting exactly the title of the laws and the articles, which at a

very minimum makes it difficult to use the laws. Several ecological laws are poorly connected to the law "On Environmental Protection" with the Criminal Code and Civil Code of Kazakhstan.
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LIST OF ABBREVIATIONS USED IN THE TEXT

1991 Law - Law of the Kazakh SSR on environmental protection in the Kazakh SSR. Alma-Ata, 1991
1997 Law - Law of the Republic of Kazakhstan "On environmental protection". Almaty, 1997.
CIS - Commonwealth of Independent States
CWG - Coordinating working group
ES - Ecological society
GEF - The Global Environment Facility
HIID - Harvard Institute for International Development
IUCN(WCU) - The World Conservation Union
MEB - Ministry of Environment and Biological Resources
MFA - Ministry of Foreign Affairs
NAPP - natural areas of preferential protection\specially protected natural areas
NEAP - National environmental action plan
NGO - Non-governmental organization
SD - sustainable development
UNDP - United Nations Developmemt Programme
UNEP - United Nations Environment Programme
UNICEF - United Nations Children's Fund
UNESCO - United Nations Educational, Scientific and Cultural Organization
WB - World Bank

The Ecological Society
"Green Salvation"

Member of
IUCN
The World Conservation Union

The Ecological Society "Green Salvation" (GS) is a non-governmental public organization established in 1990 and registered as an Almaty city organization. "Green Salvation's" goal is to improve the socio-ecological situation.

Since 1993, the organization has belonged to the International Association "Environmental Education". Since 1995, GS has been a member of The World Conservation Union (IUCN). GS members include people with a varied set of skills: historians, art critics, and engineers, etc. Membership in the organization is based on personal initiative and participation in concrete work projects. Green Salvation's members combine their organizational-related work with their professional activities. The activities of "Green Salvation" are guided by the following principles:

- the universality, indivisibility, interdependence and interconnectivity of all human rights;
- the right of individuals in present day society and future generations to a healthy and fruitful life in harmony with nature;
- the need for general environmental education and awareness;
- cooperation among governmental bodies, private entities, and non-governmental organizations to resolve environmental problems.

The main areas of activity of "Green Salvation" include:

1. Participation in the development of legislation for environmental protection in the Republic of Kazakstan. The organization has participated in official discussions on the laws entitled, "On Environment Protection in Kazakh SSR" (1991) and the laws of the Republic of Kazakhstan entitled "On Environmental Protection" (1997), "On Environmental Impact Assessment" (1997), "On Specially Protected Natural Territories" and for "On Radiation Safety for the Population".
2. The spread of environmental knowledge and strategies for sustainable development. Since 1992, "Green Salvation" has held seminars on humanitarian-ecological themes twice a month. Since 1995 the organization has published the officially registered journal Bulletin "Green Salvation". The Bulletin is dedicated to actual questions of

sustainable development, environmental education, environmental legislation, workings of specially protected nature territories as well as other socio-environmental issues.

3. Promotion of environmental education and the inclusion of environmental perspectives in thinking about current social and economic issues and culture. GS devised a special course "Conception of Sustainable Development" for students of higher learning institutes. The information will soon be published as a textbook. A history course, "The Interconnection between Society and Nature", was developed for school children. Informational and consulting support is provided to school children, students, teachers and lectures of higher institutes. Since 1996, an annual summer environmental camp has been held in the mountains of the Ile-Alatau Governmental National Nature Park.
4. Environmental action. "Green Salvation" collaborates with the Ile-Alatau National Park administration in efforts to include the park on the List of World Heritage sites of the Convention concerning the Protection of the World Cultural and Natural Heritage. Work is being done to close and liquidate an illegal solid waste dump and reduce the level of pollution in the Ainabulak and Dorozhnik micro regions.
5. Collection and dissemination of information about the environmental situation in the Republic of Kazakstan. The organization has gathered documents and reference materials on a wide spectrum of environmental problems which are kept in the GS electronic database and library.

"Green Salvation" cooperates with the International Socio-Ecological Union (SEU), the International Society of Environmental Economics (ISEE), and a number of environmental NGOs in Kazakstan, Central Asia, Russia as well as other countries. GS collaborates with subdivisions of the Ministry of Environment, other governmental structures, and officials at all governmental levels.

The Ecological Society "Green Salvation" is ready to collaborate in the above-mentioned directions.

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