
**ПРАВОВОЕ РЕГУЛИРОВАНИЕ ДОСТУПА НАСЕЛЕНИЯ К ЭКОЛОГИЧЕСКОЙ ИНФОРМАЦИИ
В РЕСПУБЛИКЕ КАЗАХСТАН**

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Аннотация. Предлагаемая статья посвящена вопросам правового регулирования обеспечения доступа общественности к информации в области охраны окружающей среды и использования природных ресурсов. Проведен комплексный правовой анализ доступа общественности к экологической информации в Республике Казахстан, рассмотрены правовые основы обеспечения, реализации и защиты права общественности на доступ к экологической информации. Особое внимание было уделено вопросам участия общественности в принятии решений в Республике Казахстан, правовым вопросам судебной защиты законных прав и интересов общественности и граждан в сфере экологического права. В целях достижения экологической информации, участия общественности в процессе принятия решений и выполнения обязательств Казахстана по выполнению Конвенции об окружающей среде были даны рекомендации по совершенствованию законодательства, основанные на трудах казахстанских и зарубежных ученых. Общественное значение экологической информации заключается в том, что население может влиять на благоприятную окружающую среду путем доступа к этой информации. Проблема поддержания чистоты окружающей среды в последнее время становится все более актуальной в мировом сообществе. В этом же направлении государства начинают налаживать международные соглашения, взаимодействовать. Вопрос экологической информации также урегулирован на международном уровне. В связи с принятием в нашем государстве нового Экологического кодекса вопрос экологической информации урегулирован более глубоко. Поэтому проблема экологической информации в работе признана экологическими правами граждан и представлены мнения о важности обеспечения. Подчеркивается место и значение конвенции Архус, связанные с доступом к экологической информации. Также проведено исследование опыта государств Европейского союза в этом направлении. В заключительной части приведены авторские рекомендации относительно состава экологической информации.

Ключевые слова: окружающая среда, экологическое право, экологическая информация, законодательство, государственный механизм.

Introduction

The environment is the well-being of the entire population, and the public has the right to know about the processes that are taking place in the city. In order to legally ensure their inherent natural right to a favorable environment, society and the individual must have full access to information about the state of the ecological environment and the use of natural resources. Only by having reliable and complete, timely environmental information can we give an objective assessment of the potential environmental hazards that may arise or have already occurred, or of the harmful effects of natural, man-made, or anthropogenic factors on human health and the environment, and take steps to eliminate them. The issue of the right of public access to environmental information is extremely important, first of all, in terms of its practical application. As we know, the first ecological law in its philosophical sense, introduced in the 19th century by the German biologist Ernst Haeckel, says: in the world, «Everything is interconnected with everything». This means that a person by his activities, even useful ones, cannot but affect other objects of nature, without disturbing some ordered processes of the environment. This circumstance imposes on the person, society and the state the obligation to use the objects of the natural environment rationally and to the maximum extent safely. But we live in the 21st century and the level of impact of anthropogenic activities on the environment increases every year and every decade [1, p. 84]. Therefore, at present, the environmental factor is beginning to play an increasingly important role for economic development and the quality of life of people. This began to manifest itself both for individual countries and for the entire planet in the form of rapidly escalating global environmental problems. In the world, a man-made type of economic development began to form, associated with the active development of mineral resources, the depletion and degradation of natural resources, and the increase in environmental pollution. In one form or another, the thesis about the growing threat of the ecological crisis to the development and existence of human civilization itself has become commonly used in the documents of international organizations, as well as in the strategies and programs of many countries. The Republic of Kazakhstan is no exception in this process. The years of independence in Kazakhstan were the years of formation and formation of a completely new state system for ensuring environmental safety, environmental protection management and environmental management. To some extent, this ensured the formation and consistent implementation of the state policy in the field of environmental protection and rational use of natural resources. But since for many decades Kazakhstan

has developed and still exists mainly a raw material system of nature management with extremely high man-made loads on the environment, unfortunately, the fundamental improvement of the environmental situation has not yet occurred and it is still characterized by the degradation of natural systems, which, of course, leads to the destabilization of the biosphere, the loss of its ability to maintain the quality of the environment necessary for the life of society [2, p. 24].

The formation of ecological culture, environmental education, scientific research in the field of ecology and nature management pose such tasks, for the solution of which it is necessary to obtain up-to-date, reliable, understandable to everyone environmental information. To a large extent, the problem of ensuring access to environmental information is also associated with the environmental nihilism of modern society. Despite the considerable legislative body, the implementation of the constitutional right to access to environmental information is a very serious problem due to various reasons, the solution of which is possible subject to scientific and practical analysis. At the same time, it should be taken into account that the term “environmental information” does not have a legal definition, and representatives of science put forward different opinions. The procedure for its provision is also not regulated [3, p. 166]. The advent of the new millennium gives us all a good reason to reflect on what good things people have done over the past thousand years and where they have made mistakes, as well as on what challenges lie ahead in this new, even more interdependent era of human history. While many of our current concerns may seem mundane, looking so far ahead, the goal of sustainable, equitable and environmentally balanced development is even more important, since it is essential to preserve the very essence of sustainable development. of life on Earth. A key element in achieving this goal is to strengthen the environmental rights of the population, so that all members of society and organizations representing their interests can play a multi-faceted and active role in the much-needed change in the structure of consumption and production. The active involvement of civil society members in the development of policies in various fields of activity and in the work on their implementation is a necessary prerequisite for achieving a tangible progress towards sustainable development. The solution of legal problems of information support of environmental relations is important first of all for the practical use of the information received by citizens.

Literature review

However, the study of these legal relations also reveals theoretical questions concerning the nature and genesis of environmental information as a legal concept, as well as the place of the right to environmental information. In the Russian Federation, since the 90s of the XX century, several dissertations were also defended, to some extent affecting the legal problems of environmental information: P.V. Gorbachev “The human right to a favorable environment in the context of the relationship between the legislation of the Russian Federation and international standards” (1995) [4, p. 15]; N.N. Grishin “Legal problems of public participation in environmental impact assessment” (1999) [5, p. 18]; A.A. Tretyakova “Environmental rights of citizens under the legislation of the member States of the European Union” (2002) [6, p. 10]; and one dissertation work, indirectly related to the legal concept of “environmental information”, O.S. Karkhu “Legal liability for violation of the legislation on environmental information” (2004) [7, p. 12]. Among the scientists from Western countries, one can mention the work of Jean-Jacques Paradissis on the topic: the right to access of Environmental information, where the main environmental and legal issues of environmental information were considered [8, p.19].

The main part (methodology, results)

The methodological basis of the research is based on an organic combination of the requirements of general scientific and private scientific methodology. When writing the article, private scientific methods were widely used: formal-legal and structural-system analysis, concrete-historical, comparative-legal, logical, sociological and statistical methods, the method of analysis and synthesis, the method of modeling, etc. In the Republic of Kazakhstan, a dissertation study was carried out by R.Expert on the topic: «Legal regulation of public access to information in the field of environmental protection and use of natural resources (comparative analysis of national and international legislation)». In this paper, the author comprehensively considered the issues of providing the public with environmental information. Main Part Although the scope of the Aarhus Convention is regional, its significance is nevertheless universal. To date, it represents the most comprehensive development of principle 10 of the Rio Declaration, which emphasizes the need for citizens to participate in environmental issues and to have access to information available to public authorities. As such, it represents the most ambitious and bold idea in the creation of the the «ecological democracy» that has ever been implemented under the auspices of the United Nations. In addition, the Convention will be open for accession by those countries that are not members of the ECE. This will allow it to become a kind of universal basis for strengthening the environmental rights of citizens. Special session of the United Nations General Assembly to be held in 2002 on the occasion of

the tenth anniversary of the Summit [9].

«Planet Earth» will provide a timely opportunity to identify the relevance of the Aarhus Convention as a possible example of strengthening the application of principle ten in other regions of the world. The United Nations Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters is commonly known as the Aarhus Convention, after the city of Aarhus in Denmark. On 25 June 1998, it was signed by 38 countries at the 4th Conference of European Environment Ministers within the framework of the «Environment for Europe» Process. The entry into force of the Convention required the consent of 16 countries that would have ratified, acceded to or approved it (depending on the requirements of national legislation). Kazakhstan signed the Aarhus Convention in 1998, and Kazakhstan ratified it in October 2000. On January 11, 2001, the ratification was confirmed by the Depositary-the UN Secretary-General. The State agency responsible for the implementation of the Aarhus Convention in Kazakhstan is the Ministry of Environmental Protection of the Republic of Kazakhstan. As a party to the Convention, Kazakhstan must fulfil its obligations to implement its provisions on ensuring access to information and justice, public involvement in decision-making on environmental issues, and the inclusion of all stakeholders in the process. The purpose of the ratification and implementation of the provisions of the Aarhus Convention is to create a regulatory framework for ensuring access to environmental information, raise public awareness of environmental issues, and strengthen environmental legislation in matters related to compliance with environmental standards. Article 3 of the Convention contains provisions according to which each party must adopt the necessary laws regulating the implementation of the provisions of the Convention, access to information, public participation and access to justice, as well as the proper enforcement of their application [10].

«Environmental information means any information in written, audio-visual, electronic or any other material form about: (a) The state of the elements of the environment, such as air and atmosphere, water, soil, land, landscape and natural objects, biological diversity and its components, including genetically modified organisms, and the interaction between these elements; (b) Factors, such as substances, energy, noise and radiation, as well as activities or measures, including administrative measures, environmental agreements, policies, legislation, plans and programmes, that have or are likely to have an impact on the elements of the environment covered in subparagraph (a) above, and cost-benefit analysis and other economic analysis and assumptions used in decision-making on environmental matters; c) health and safety, conditions of human life, as objects of culture and buildings and structures to the extent that they impact or may impact the status of the environment or, through these elements, the factors, activities or measures referred to in subparagraph b) above» (P 3). It is also very important to define what is meant by “access to environmental information”. First of all, it can be said that access to information takes place whenever a person receives some environmental information from any source (like from the government, private corporations, local authorities, the media, or even his neighbours). A distinction can however be drawn, depending on the reason why environmental information is communicated to a certain person. First, environmental information might be imparted to a person because he has previously requested it. Thus, a private company or a public body might give environmental information because a person or a group of persons have asked for it. Second, environmental information might be communicated to people voluntarily by the bodies holding it, in which case recipients of information have not asked for it before. In both cases, there is access to environmental information, though not necessarily because a legal instrument (such as a statute or another piece of legislation) compels that [8, p. 155].

According to the new Environmental Code of the Republic of Kazakhstan environmental information means any information in written, visual, audio, electronic or any other material form: 1) on the state of the components of the natural environment, natural and natural-anthropogenic objects, natural complexes, objects of the state nature reserve fund, biodiversity, including genetically modified organisms, and the interaction between them, as well as on ecosystem services, the gene pool and genetic resources of living organisms; 2) on the factors that have and (or) can have an impact on the elements specified in subparagraph 1) of this paragraph; 3) made by the state administrative, legislative, policy and other measures, including the development of legislation, policies, plans, programs and agreements in the field of the environment providing and (or) are able to affect the elements and factors referred to in subparagraphs. In addition the current Environmental Code of the Republic of Kazakhstan provides for access to information on environmental protection by citizens and mechanisms for providing environmental information to interested persons [11]. Another two – pronged question that follows from the legislative definition is the question of what information belongs to environmental information, and what information does not belong to it. Ambiguity often arises, especially in matters related to commercial and state secrets protected by law. The possibility of ambiguous interpretations of definitions given in different laws creates conflicts. This does

not mean that all information about the environmental situation should be distributed to the population, as it may be of an economic nature or undermine the security of the state. Therefore, not only environmental organizations, but also structures responsible for the security of the country should participate in the transmission of Environmental Information. However, the current legislation does not contain clear guarantees of the constitutional rights of citizens. Although citizens have the right to submit their comments to state bodies, officials are not obliged to take these comments into account. In practice, the facts of legal nihilism of officials, violation of the environmental rights of citizens, suppression of the requirements of legislation increase the likelihood of causing irreparable harm to the environment and human health and life. Therefore, we believe that responsibility for these issues should be strengthened [12, p. 215].

Conclusion

Some non-governmental organizations argue that environmental information should include information not only about the state of Natural Resources, atmospheric air, but also about the stratosphere. This is a thought expressed in connection with the fact that the fragments of the space apparatus pollute the stratosphere and pose a threat to the life and health of people as a result of falling to the ground. Questions about whether the list of environmental information should be limited are currently hotly debated. State bodies should be tasked with providing information to the population about environmental disasters and disasters and other emergencies. We all remember the tragedy of Chernobyl, when the government of the USSR failed to fulfill its duty to the people by providing late information about the disaster that occurred. Given the tragic consequences of Kazakhstan's failure to receive timely, accurate and complete information about administrative and other measures that affected the environment, we can say that the reflection of the norm on free access to environmental information in the Constitution and the ratification of the Aarhus Convention were a logical reaction to our lessons. Currently, the country does not have a mechanism for providing environmental information to any person, and there is no legislative act on the issue of providing accurate environmental information. It is true that some scientists have already raised the issue of adopting the law «on Environmental Information». But the question arises as to how much such a law is necessary. According to dubayeva, the Republic of Kazakhstan has adopted sufficient regulatory legal acts that establish and regulate access of citizens and organizations to information, and we do not need legislation that repeats the norms of each other. As the above data shows, ensuring the right of citizens to access environmental information is very relevant today. The current legislation provides for this issue at a significant level. The general procedure for considering citizens' requests by state bodies is fully established by the current legislation of the Republic of Kazakhstan. However, it should be noted that the lack of the concept of Environmental Information in the legislation, criteria for complete information, allows ambiguity in the understanding of the legislation.

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