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Regulatory Issues of Depollution in Kazakhstan

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Abstract: Nowadays, the environmental situation in most of the territory of the Republic of Kazakhstan is not only unfavourable, but also catastrophic. Studying the world experience, the author of this study suggested creating an environmental fund, the activities of which are carried out in the following areas: attraction of financial sources, distribution of funds and control over their rational use; scientific research; international relations. The creation of the environmental fund of Kazakhstan is pursued in the Environmental Code. Nevertheless, it is necessary to adopt the Law of the Republic of Kazakhstan "On the Environmental Fund of the Republic of Kazakhstan".

Keywords: environmental protection; state environmental fund; depollution; legal framework.

1. Introduction

In modern conditions, environmental protection is becoming not just the most important, but an integral condition for any environmentally significant economic activity, that is, economic development should be environmentally safe¹). Within the framework of ensuring national, environmental safety, the legislation of the Republic of Kazakhstan makes provision for liability for environmental offences, with separate provisions addressing the compensation for environmental damage. However, all this is not enough to solve this problem. At the moment, all revenue (from environmental payments, payments for emissions into the environment, fines, compensation for environmental damage, and payments for nature use) does not have a targeted orientation. Fees for issuing permits for emissions into the environment by environmental authorities and penalties for violating environmental limits are applied as a means of increasing revenues to the treasury, and not as an integrated system for preventing and controlling pollution in terms of environmental permits and compliance requirements.

Annually, the republican and local budgets receive funds in the amount of about 110 billion tenge²). However, due to the lack of purposefulness of environmental payments, in some regions, the share of costs for the implementation of environmental measures was no more than 10%³). However, claims for compensation for

damage caused to the environment must be motivated, contain references to the provisions of substantive and procedural law, evidence of direct actual damage and evidence of a causal relationship between the illegal actions or inaction of the guilty person and the damage caused. "Rules of the Economic Assessment of Damage from Environmental Pollution", approved by the Resolution of the Government No. 535 dated June 27, 2007 (hereinafter referred to as "the Rules") do not make provision for the submission of evidence of harm to the natural object, lack criteria for the contamination of the natural object, the criteria for its degradation, which should serve as a basis for qualifying the actions of a natural resource user and filing claims against them for compensation for harm caused⁴).

Since the funds received by the state budget, in general, are not fully spent for environmental purposes, it is necessary to create a special state organisation that ensures compensation for environmental damage and the costs of these reimbursements for environmental restoration on a targeted basis. Accordingly, this measure is to be implemented by introducing amendments to the budget legislation concerning the structure of the republican and local budgets.

The aim of the research is to make an analysis about legislatively environmental safety, environmental protection, and the development of a mechanism for the effective use of natural resources in the Republic of

Kazakhstan. The novelty of the article lies in the study of the effectiveness of the integrated system for preventing and controlling pollution.

2. Analysis of the experience of other countries in combating the consequences of pollution

The problem of restoring the polluted environment is a matter of time, and this requires the accumulation of sufficient sources of funds and an effective organisation system. In international practice, the funds received for environmental pollution are directed towards depollution, which is what the environmental fund is authorised to do. In the Czech Republic, from 1991 to 2016, revenues paid for atmospheric air pollution (such as other environmental taxes and payments) were transferred to the state environmental fund, only since 2017 – to the state environmental fund (65%), the local budget (25%), and the republican budget (10%). As stated in the law, the funds received by the local budget should be used to finance activities related to the assessment, measurement of pollution organised by the Ministry of Ecology, the air quality information system, monitoring and dissemination of information. *Brazil*. In the city of Sao Paulo, Brazil, a general use water supply company transfers 1% of its income to the environmental fund, which is spent on reforestation in the upper part of the Korumbai district.

The situation in Canada is interesting. The compensation mechanism is the establishment of an environmental fund and the relocation of key species. Terasen company was to expand the TransMountain gas pipeline to increase exports to international markets, as well as to Eastern Canada and North America. But this gas pipeline passed through the territories of two protected areas – Jasper National Park and MountRobsen State Park, which are included in the UNESCO (United Nations Educational, Scientific and Cultural Organization) World Heritage List. The goal was set to achieve zero losses and an increase in biodiversity. During the expansion of the gas pipeline, measures were taken to protect sensitive habitats of rare plants and communities, wild animals, and forests, as well as measures to reduce noise levels. The company has committed itself to monitoring the state of ecosystems and biodiversity of the territories affected by the expansion of the gas pipeline within five years after the completion of the project. The company also performed a comprehensive environmental assessment of the impact of the gas pipeline expansion project. The amount of compensation amounted to 3 million US dollars, of which 2.3 million US dollars was spent on the creation of an environmental fund, which was called the TransMountain Heritage Fund. The TransMountain Heritage Foundation successfully conducts environmental protection activities and research on the territories of two parks every year⁵⁾.

Considering the objective environmental situation in the country, the above-mentioned foreign experience would contribute to the establishment of a harmonious system of scientifically sound exercises and practical skills aimed at considering effective ways to organise measures to compensate for the consequences of environmental impact, forming the basis for their legal regulation. The restoration and legal consolidation of state environmental funds that meet modern requirements would allow the accumulation of the necessary funds for environmental restoration and control their intended use. Within the framework of economic diversification, its integration into international macroeconomic processes and the creation of technological clusters would enable a real improvement in the state of the environment. The creation of trust funds for environmental protection would allow financing of scientific developments relating to new environmentally safe production technologies with their subsequent introduction into everyday life.

In addition, in environmental law, it is a great challenge to achieve the possibility of legal regulation of the use of common natural resources with transboundary countries, or joint solution of environmental issues relating to the protection of the climate and the ozone layer of the Earth with these transboundary countries, acceptance of the issue of environmental responsibility, reimbursement of environmental costs, etc. The solution to these issues can be found by contacting international environmental funds. Therewith, a large share of international environmental resources can finance environmental protection. For example, according to the decision of the countries that signed the Montreal Protocol (1987), a temporary fund was established to financially support the countries that ratified the protocol in the Annex to the Convention on the Protection of the Earth's Ozone Layer⁶⁾.

3. The role and importance of the Environmental Fund in the restoration of environmental consequences

To ensure the environmental safety of the country, the development of a system ensuring the use of environmental payments for depollution is a time requirement. The establishment of a special environmental fund is one of the ways to solve this issue. Back in 2009, E. E. Sharipbekov raised the issue of establishing environmental funds at the regional and national levels⁵⁾. Some theoretical and practical aspects of the problem of compensation for environmental damage were also reflected in the studies by B. Zh. Zharylkasynov, E. Abdraimov⁷⁾, D. L. Baydeldinov⁸⁾, L.K. Erkinbaeva⁹⁾, Zh. A. Bitabarova¹⁰⁾, E. N. Nurgalieva¹¹⁾, etc.

In the scientific study by M. A. Urazgalieva, the structure of the environmental tax and the mechanism of functioning of the environmental development Fund of Kazakhstan were proposed¹²⁾. In her dissertation research "Problems of Legal Support of the Economic Mechanism

of Environmental Protection", T. V. Petrova considered the problems of improving the regulatory foundations of the activities of state environmental funds¹³). There were facts when public activists appealed to the authorised bodies with a proposal to create a target environmental fund, which would receive all environmental deductions and fines¹⁴).

In 2018, the Concept of the New Environmental Code was approved¹⁵), and on December 24, 2019, the approved version of the Code was submitted for consideration and

adoption to the Parliament of the Republic of Kazakhstan. The issue of establishing an environmental fund is on the agenda of the Draft Environmental Code. There is a provision on the 100% use of environmental payments by local executive bodies for the implementation of environmental protection measures, according to the approved list. The management function in this case should represent permanent efforts to ensure environmental protection and rational use of natural resources (Figure 1)¹⁶).



Figure 1. Efforts to ensure environmental protection and rational use of natural resources

The Law of the Republic of Kazakhstan "On Environmental Analysis" was adopted to prevent negative impacts of economic and other activities on the environment and to implement this part of the constitutional law of the Republic of Kazakhstan and to address the environmental protection issues and ensure environmental safety¹⁷). Environmental analysis is the

establishment of compliance of the planned economic and other activities with environmental requirements and the determination of the admissibility of the implementation of the object of environmental analysis to prevent possible adverse effects of this activity on the environment and related social, economic, and other consequences of the implementation of the object of environmental expertise¹⁶).

Since the activities of the environmental fund make provision for the financing of research on environmental safety, it can immensely contribute to the improvement of the level of research, technological potential, and competitiveness of scientific organisations and their teams. In addition, the establishment of an environmental fund would allow choosing the optimal ways of depollution to ensure the environmental safety of the country, and promote the enjoyment of citizens' constitutional rights to a clean environment. To achieve the possibility of effective depollution, it is key to attract qualified specialists who would properly examine the consequences, correctly identify the possibility of reverting the consequences and identify irrational allocation of funds.

4. On the economic basis of the environmental fund and the legal regulation

The attraction of funds for financing activities concerning environmental protection and processing of its resources based on reserves as a structural, institutional element of the economic mechanism is intended for cost recovery. According to the data, the experience of creating a state environmental fund is not new for Kazakhstan. In the Republic of Kazakhstan, until 2001, there was a legal basis for the establishment of state environmental funds, the predecessors of which were territorial nature protection funds developed in accordance with the resolutions of the CPSU (Communist Party of the Soviet Union) Central Committee and the Council of Ministers of the USSR (Union of Soviet Socialist Republics) of January 7, 1988, "On the Radical Restructuring of Nature Protection in the Country", the Council of Ministers of the USSR of March 18, 1988, No. 93 at the krai, regional, city executive committees of the Soviets of People's Deputies. The main sources of their financing were basically similar to those later consolidated in the Law of the USSR "On Environmental Protection": payment for environmental pollution; funds collected as compensation for damage caused to the environment; voluntary contributions from citizens, organisations, etc. It was supposed to use the resources of the funds for the construction of treatment facilities, technical re-equipment and reconstruction of enterprises, financing of work on the development and implementation of environmental technologies, new types of equipment, etc.

Notably, at that stage, a mechanism was developed that ensured the preferential use of the collected fees for financing environmental activities of organisations that pay funds. Sending payments to the funds served as a way of reserving them, accumulating them for subsequent targeted return to the payer, but for the implementation of particular environmental trade unions. The formation of these funds was to a certain extent timed to the establishment of a new structure in the system of state executive bodies – the USSR State Committee for

Environmental Protection and the system of its territorial bodies.

On October 15, 1993, the Cabinet of Ministers of the Republic of Kazakhstan adopted Resolution No. 1024 "On Nature Protection Funds in the Republic of Kazakhstan"¹⁸⁾, wherein it decided to establish the Republican Nature Protection Fund under the Ministry of Ecology and Bioresources. According to the above Resolution, under the control of environmental and bioresources authorities, enterprises transferred payments for emissions of pollutants to the nature protection funds. On October 5, 1994, the Cabinet of Ministers introduced changes and amendments to the Resolution of 1993, transferring the funds from "extra-budgetary" to "the revenue part of the budget". Based on these changes, control over the calculation of payments for emissions of pollutants was assigned to the Main Tax Inspectorate of the Ministry of Finance of the Republic of Kazakhstan. The Law of the Republic of Kazakhstan "On Environmental Protection" of July 15, 1997, allowed for the establishment of a fund, but by introducing changes and amendments of April 1, 2001, environmental funds were legally cancelled, payments for pollution started flowing to the general budget and without the possibility of controlling their intended use^{17),19)}. Accordingly, there was no clear calculation describing the extent of environmental losses allocated towards depollution²⁰⁾.

Since 2009, a public fund has been operating in Kazakhstan – the "Environmental Fund of Kazakhstan", its activities are extensive. But this fund does not have the competence to solve the issue of environmental restoration at the expense of environmental payments received by the budget. Even though scientific institutes are engaged in solving environmental problems, steps are being taken to form cooperation with international organisations, with evident effectiveness of establishing centralised systems specifically rendering these services²¹⁾. The legal regulation of the environmental fund activities is a complex process and requires a comprehensive study (except for environmental relations, legal, economic, and international relations)²²⁾⁻²⁶⁾. Accordingly, the issues of the economic foundations of the fund (the procedure for accumulating the resources of the environmental fund; the main areas and procedure for using the resources of the environmental fund; accounting and reporting of the environmental fund), communication with other collectives (with international organisations), the legal status, and responsibility of participants remain open. Since the funds of the state environmental fund are attracted from the republican and local budget payments and other sources, it is appropriate to amend the legislation on the budget. It is also important to adopt a special Law of the Republic of Kazakhstan "On the Environmental Fund", which comprises the following sections:

1. The general part. Explanation of the State Environmental Fund and its features.

2. Section 1. The Organisation of the State Environmental Fund Activities.
3. Section 2. Fundamental Rights and Obligations of the State Environmental Fund.
4. Section 3. The Procedure for the Accumulation of Funds of the State Environmental Fund.
5. Section 4. The Main Areas and Procedure for Using the Resources of the State Environmental Fund.
6. Section 5. Accounting and Reporting of the State Environmental Fund.
7. Section 6. Cooperation of the State Environmental Fund with the International Environmental Fund.
8. Conclusion.
9. Appendix²⁷⁾⁻³⁰⁾

5. Conclusions

Thus, the purpose of establishing the State Environmental Fund lies in the rational depollution to ensure the environmental safety of the country. There are the following three options for creating a state environmental fund: in the form of a structural subdivision of the Ministry of Agriculture of the Republic of Kazakhstan, Ecology, Geology, and Natural Resources of the Republic of Kazakhstan, or the Ministry of Finance of the Republic of Kazakhstan. In this case, an independent department is created. Accordingly, similar departments are created vertically under regional and district government bodies. However, the creation of such a service would lead to an expansion of the staff of the Ministry of Agriculture or the Ministry of Finance of the Republic of Kazakhstan and contradict the current national policy. Also, it could be in the form of a joint-stock company (JSC). The founders of the JSC can be the Government of the Republic of Kazakhstan, research and production centres and research institutes, universities, and rich (solvent) agricultural enterprises.

The last option for creating a state environmental fund could be in the form of a state enterprise. This form would allow the establishment of a unitary autonomous collective combining the interests of enterprises, scientific and educational institutions, state and commercial structures, and ensuring their effective interaction.

The author of this study believes that the latter would be more effective. Its activities would be carried out mainly in the following areas: attraction (accumulation) of financial sources, distribution of funds and control over their rational use; scientific research; international relations. The activity of the environmental fund is not limited to environmental standards, as it covers several important areas of public relations, namely economics, political, legal, international, and others. Therefore, it requires the adoption of a special law.

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