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The right of the public to obtaining ecological information in the Republic of Kazakhstan

The active participation of citizens and civil society in environmental protection is considered necessary to achieve the environmental security of the Republic of Kazakhstan and the sustainable development of the modern international community. The public can effectively participate in the solution of environmental problems in conditions when it is well informed on existing threats to the environment and the health of citizens. It is very important to create conditions for obtaining information from the government, and also the organizations and the enterprises who's activities have or could have a negative impact on the environmental situation.

The right of access to information is ensured through the following measures:

- Necessity of bringing information to the public;
- reporting of information to the public;
- Satisfaction of personal and collective requests for information.
- As guarantees of direct realization of the right of citizens on the freedom of receiving information distribution the Constitution of RK establishes:
 - The rights and freedoms of the person belonging to everyone from birth, admit absolute and inalienable, define the contents and application of laws and other normative legal acts (item 2 of Art. 12);
 - Everyone has the right to the inviolability of private life, personal and family secret, protection of the honor and dignity (item 1 of Art. 18);
 - Everyone has the right to confidentiality of personal deposits and savings, correspondence, telephone conversations, postal, telegraph and other messages. Restrictions of this right are allowed only in

- cases and as it should be, directly established by the law (item 2 of Art. 18);
- Responsibilities for all state bodies, public associations, officials and mass media, providing to each citizen the opportunity to study documents, decisions and information sources (item 3 of Art. 18) mentioning his rights and interests;
 - All laws, international treaties to which the Republic is published. Official publication of the regulations relating to the rights, freedoms and duties of citizens, is an indispensable condition of their application (item 4 of Art. 4);
 - Citizens of the Republic of Kazakhstan have the right to apply in person and submit individual and collective appeals to state bodies and local governments (item 1 of Art. 33);
 - Concealment by officials of facts and circumstances endangering the life and health of the people responsible in accordance with the legislation of the Republic of Kazakhstan (item 2 of Art. 31);
 - Freedom of expression and creativity are guaranteed. Censorship is forbidden (item 1 of Art. 20);
 - Everyone has the right to receive and extend freely information by any means, not forbidden law in the way (subitem 2 of Art. 20);
 - In court everyone has the right to be listened to (subitem 4 of item 3 of Art. 77);
 - Nobody is obliged to give evidences against himself, wife (husband), and close relatives, as defined by law. The clergy are not required to testify against those who confided in him in confession (subitem 7 of item 3 of Art. 77).

In the process of the realization of the constitutional right to information as consumers (users) of information acts citizens, foreigners and stateless persons, as well as state bodies, public associations and other legal entities. The right to information, as noted earlier, is regulated in a number of administrative laws, namely the Law „On administrative procedures” on November 27, 2000, the Law „On the Procedure of consideration of physical and legal entities” dated January 12, 2007 and the Law „on Information” from January 11, 2007. Last regulates the right of individuals and legal entities to free access to public e-government information resources.

- 1) obligation of government bodies (officials) to provide necessary information to individuals, thus the state strictly regulates the range of information that can't be classified;
- 2) publications of the regulations adopted by government bodies;
- 3) creating sites of public authorities, which highlights all their activities;
- 4) active interaction of government bodies with the mass media;
- 5) the introduction of an integrated information system, through which it is possible to obtain information anytime and anywhere;
- 6) development of the special computer programs, allowing to avoid the facts of corruption and to simultaneously monitor the public activity of state bodies and departments;
- 7) transparency of financial flows and transactions conducted by government agencies and national companies¹.

The main implementer of the right to information is the inquiry. „The inquiry is a request of the person for providing information on interesting questions of personal or public character”². The inquiry is a classical way of obtaining official information, its legislative basis. It carries a double burden. First, as a way of obtaining necessary information, and, secondly, as „a basis of implementation of public control over the activity of public authorities, local governments, public, political and other organizations, as well as the state of the economy, the environment and other areas of public life”³. In practice, the inquiry allows physical and legal entities to address in any government body, for the purpose of obtaining any interesting information without explanation and the receiving purposes.

¹ A.E. Zhatkanbayeva, *Realization of the rights of citizens of the Republic of Kazakhstan on obtaining information*, [w:] *Legal problems of public administration in the conditions of market the relation in the Republic of Kazakhstan*, materials of the international scientific and practical conference, KazNPU named by Abay, Almaty 2006, s. 64–69.

² Law RK „On the order of consideration of physical and legal entities” on January 12, 2007 No. 221-III ZRK, Information system „Paragraph”.

³ T. Tropina, *Cybercrime and cyber terrorism*, [w:] *Computer crime and cyber terrorism: The collection of scientific articles*, eds. V.A. Golubev, H.H. Akhtyrsky, Zaporozhye 2004, Vyp. I., s. 209–215.

In order for effective and efficient information for the supporting of physical and legal entities, and also government bodies and organizations, the state assumes a duty of formation, protection, updating and use of the state information resources. The list of types of documentary information and the electronic documents provided without fail for the formation of the state information resources⁴, and also order of their registration is defined by the government of RK. The agency of informatization and communication of the Republic of Kazakhstan keeps the state register of information resources and information systems. Data of the State register on information resources and information systems, in part, does not contain information with restricted access, are widely available for posting on the Internet or on the web-site „State Register of Information Resources and information systems of the Republic of Kazakhstan”.

According to the Law RK „About informatization” the duty of creation of electronic information resource is assigned to government bodies concerning the activity and activities of the structures subordinated to them, as well as ensure their preservation, renewability and free access to citizens. „The state electronic information resources are formed for ensuring information requirements of government bodies, physical and legal entities, and also for electronic services”. The state reserves the right to define the status of information and to dispose of electronic information resources. The list of information provided on a paid and gratuitous basis is defined by the government resolution.

Physical and legal entities, are entitled to free access to information resources containing information about them, and also specification of this information for ensuring its completeness and reliability. Government bodies are obliged to provide within the competence access to physical and legal entities (users) to the information resources containing data concerning their rights, freedoms and legitimate interests, to their safety and other questions concerning them directly or representing public interest. Data belong to such information: about a salary and other sources of in-

⁴ Rules for Registration of government information resources and information systems and the maintenance of the state register of information resources and information systems. Approved by the Government Resolution of 19 October 2004, Information System „Paragraph”.

come; health status and results of medical examinations; about property and property rights of the person; about the social rights and their realization; about the condition of bank accounts; about the copyright and consequences of their realization; about the confidential information (codes, ciphers, numbers of documents and so forth) and also the right to get acquainted with materials of criminal cases or the case considered in a civil and procedural order, concerning it directly. Besides, the citizen has the right to receive information about their relatives if it doesn't contradict the law and interests of relatives.

The legislation defined the list of information which isn't subject to a classification (The law RK „About State Secrets” of March 15, 1999), the list of information which has to be without fail presented to the mass media (The law „About Mass Media” of July 23, 1999). Besides, access to confidential information can't be limited concerning the acts establishing the legal status of government bodies, the organizations and public associations, and also the right, a duty of citizens and an order of their realization. Point 5 of article 14 of the Law „About Informatization” defines that „it can not be restricted to government information resources, containing:

- 1) legal acts, except for the regulations containing state secrets;
- 2) data on emergency situations, natural and technogenic catastrophes, weather, sanitary and epidemiologic and other conditions necessary for the safety of citizens, settlements and production objects;
- 3) official data on the activity of government bodies;

The data accumulated in open information systems of government bodies, libraries, archives and other organizations”.

In case the citizen requests information representing state secrets, he needs to undergo procedure „the admission to state secrets” which represents „procedure of registration of the right of citizens on access to the data making state secrets, and the organizations - on work wich use such data”⁵.

In the course of obtaining information the citizen has the following rights:

- To choose a form of giving to the inquiry – written, oral, or electronic, assured by the electronic and digital signature;

⁵ The law of the Republic of Kazakhstan „On information” of January 11, 2007 No. 217-III ZRK, Information System „Paragraph”.

- Not to explain motives and the reasons of giving to the inquiry;
- To receive the answer to the inquiry in written form.

Refusal in providing information, providing incomplete information or obviously false information by government bodies can be appealed by the citizen in an administrative and judicial order. In this case, citizens are obliged to observe requirements of the relevant legislation of the Republic of Kazakhstan.

Currently developing another method and form of giving and receiving the necessary information from government and other sources, namely appeal by electronic sites. The majority of government bodies and organizations have to constantly update sites on which the main information about the activities taken by regulatory legal acts, information on planned activities and more. Citizens and legal entities have the right „to send” information, to request data and to ask questions.

In addition, one of the measures to ensure an effective and transparent public administration is that the country underwent a major operation on the creation and introduction of the e-government. This system has worked in our country for nearly six years.

This kind of unified information networks exist and function successfully in a number of countries in Europe and Asia, from CIS countries of the most progressive it is considered the electronic government of Belarus. Kazakhstan took the practice of Malaysia for arms. The formation program of „the electronic government” is intended for the Republic of Kazakhstan to create a uniform system connecting all links and levels of government bodies that will allow to receive, transfer and analyze necessary information instantly. It allows you to repeatedly reduce paper work, respectively, the time and financial resources, and the return on investment of funds foreseen for 8 years after the implementation of the project. Introduction of “electronic government” in Kazakhstan is directed on the improvement of quality and the reduction of terms granted by government bodies of services to the citizens and the organizations, ensuring access to information based on the activity of government bodies, in the long term taking into account the improvement of management systems the creation of effective and optimum government on structure. The main priorities of the creation of „the electronic government” are ensuring access to Internet

communication, education level increase in the sphere of information and communication technologies, and also carrying out the modernization of systems of public administration”⁶.

At the same time it should be noted and that fact that the legislation and measures taken by the state for providing guarantees for realization of the right of individuals and society to information and information resources will not fully solve the problem. Often, the norms of the law are just a declaration. Many government bodies seek not to allow disclosure though any information.

The Republic of Kazakhstan has no single law on access to information, and this area is regulated by various laws and regulations. The need for a special law regulating the access of citizens to information, ripened long ago, but its adoption is postponed. Legislating the right of access to information, including environmental and begins with the basic law of the Republic of Kazakhstan - the Constitution. Article 18, paragraph 3 of the Constitution establishes the right of access to information which directly affects the rights and interests of „Government bodies, public associations, officials and the mass media are obliged to provide to each citizen the opportunity to study documents, decisions and information sources mentioning their rights and interests”.

Besides, according to Art. 20 of item 2 of the Constitution of RK „everyone has the right to freely receive and impart information by any means not prohibited by law”⁷.

Thus, the legislation fixes the opportunity to receive and impart information as the citizens of Kazakhstan and who aren't. In addition, based on the scope of the Law „On the procedure of consideration of physical and legal entities” (Art. 3) treatment can be made by individuals and legal entities⁸.

The main legal act defining the mechanism of the right of access to information is the Law of the Republic of Kazakhstan of January 12, 2007

⁶ The decree of the President of the Republic of Kazakhstan „on the state program of formation of «the electronic government» in the Republic of Kazakhstan for 2005–2007” of November 10, 2004, No. 1471, Information System „Paragraph”.

⁷ The constitution of the Republic of Kazakhstan is adopted on a republican referendum on August 30, 1995, Information System „Paragraph”, 2013.

⁸ The law of the Republic of Kazakhstan of January 12, 2007, No. 221 „on order of consideration of physical and legal entities”, Information System „Paragraph”, 2013.

No. 221-III „On the order of consideration of physical and legal entities”. This law regulates the general procedure for processing applications, contains definitions of the main concepts, the rights and obligations of the parties of the public relations connected with giving and consideration of addresses of physical and legal entities for realization and protection of their rights, freedoms and legitimate interests⁹.

The issues of public access to environmental information have been reflected in a number of international environmental conventions ratified by the Republic of Kazakhstan. Most important of them is a Convention of the European Economic Commission of the UN on access to information, participation of the public in the decision-making process and access to justice on the questions concerning environment (hereinafter – the Aarhus Convention).

Kazakhstan ratified this international legal document in 2000. The convention establishes high requirements for the work of government bodies and officials with public requests for receiving by ecological information which have to be observed in Kazakhstan.

The definition of „environmental information” given in point 3 of Article 2 of the Aarhus Convention, and covers the following types of information:

- about a state of environment, including its separate elements (air, water, the earth, the soil, landscapes and natural objects, the biological diversity, genetically modified organisms, etc.) and their interactions;
- About factors of impact on environment (polluting substances, noise, radiation, etc.);
- About activity or measures, including policy, the legislation, programs and plans that may have an impact on the environment;
- about the state of health and safety of people, objects of culture and buildings in connection with influence or potential impact on them of ecological factors¹⁰.

⁹ The law of the Republic of Kazakhstan of January 12, 2007 No. 221-III „on order of consideration of physical and legal entities”, Information System „Paragraph”, 2013.

¹⁰ The convention on access to information, participation of the public in decision-making and access to justice on the questions concerning environment (Aarhus Convention), Information System „Paragraph”, 2013.

A similar definition of the concept „ecological information” is given in point 1 of article 159 of the Ecological code.

Ecological information available to the public, except some cases provided by the laws of the Republic of Kazakhstan. Access to certain information and data components, composing public ecological information, is carried out by inquiries of physical and legal entities, distributions in the mass media, in special editions, available on the Internet, as well as with the use of other publicly available information and communication tools.

Access to the government information resources (information databases) ecological information is provided by means of the formation and maintenance of public registers and inventories of ecological information.

Providing access to documents and the information resources containing information and data with limited access is carried out in an order established by the legislation of the Republic of Kazakhstan.

Ecological information includes information and data about:

- 1) The state of the environment and its objects;
- 2) factors of impact on the environment, including its pollution;
- 3) software-based, administrative and other measures which have or may have an impact on the environment;
- 4) ecological standards and ecological requirements to economic and other activity;
- 5) planned and realized actions for environmental protection and their financing;
- 6) the activity making or capable to make an impact on the environment, the process of decision-making and results of inspection and ecological checks on it, including the calculations considered thus, analyses and other data concerning the environment;
- 7) The impact of the environment on health, safety and living conditions of the population, cultural facilities and buildings.

Ecological information can be expressed in written, electronic, audio-visual or other forms.

The activities of government bodies and other legal entities for the formation and distribution of ecological information.

Collecting, the account, storage and distribution of ecological information by government bodies and other legal entities are carried out for the

information support of the activity of government bodies, planning and performance of actions for environmental protection and realization of the right of citizens favorable for the life and health environment. The ecological information which is subject to obligatory collecting, the account and storage by government bodies and other legal entities, is defined by the legislation of the Republic of Kazakhstan.

The obligation to check and record the specially authorized government bodies, which can make a considerable impact on the environment, as well as any emergency situations of natural and technogenetic disasters that pose a serious threat to the environment, life and health.

For systematization of ecological information and improvement of access to government bodies form and maintain electronic inventories of ecological information.

Government bodies according to their competence, spread by posting on the Internet and applications of other public information and communication tools the following types of ecological information:

- 1) reports on the state of the environment;
- 2) projects and texts of regulations and international treaties concerning environmental protection;
- 3) projects and texts of the documents concerning state policy, programs and plans in the field of environmental protection;
- 4) reports on results of control and inspection and law-enforcement activity in the field of environmental protection;
- 5) information carried to the list of basic services of the electronic government in the field of environmental protection.

For the distribution of ecological information government bodies can attract individuals and legal entities in an order provided by the legislation of the Republic of Kazakhstan about government procurements and the state social order.

The centralized collecting, the account and storage of ecological information are carried out by the State fund of ecological information. Management of the State fund of ecological information is carried out by the organization subordinated to authorized bodies in the field of environmental protection. Information resources of the State fund of ecological information include materials and documents:

- 1) represented without fail by government bodies and legal entities;
- 2) transferred by physical and legal entities on a voluntary basis.

The structure of the State fund of ecological information includes the following types of ecological information:

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

For systems and evidence providing ecological information the complex scientific and help collection of cartographic materials – the National ecological atlas is formed. Development and the publication of the National ecological atlas will be organized by authorized bodies in the field of environmental protection.

Physical and legal entities have the right to free access to public state information resources of ecological information. Government bodies, and also the officials who are carrying out the state functions, or the physical and legal entities providing the population on the basis of the public contract of service, concerning to environment, are obliged to provide open access to ecological information, including inquiries of physical and legal entities.

Other physical and legal entities that are carrying out activity in the territory of the Republic of Kazakhstan are obliged to provide the ecological information relating to the impact on life and health of the citizens by inquiries of persons. Physical and legal entities have the right to obtaining

ecological information from persons, in a required form if there is no basis to provide it in other forms.

In cases when the government body has no required ecological information, the received inquiry will be forwarded to the competent public authority within the time prescribed by the legislation of the Republic of Kazakhstan.

The terms and procedure for providing environmental information by government bodies established by the legislation of the Republic of Kazakhstan on administrative procedures and on the order of consideration of the citizens. Physical and legal entities, provide required ecological information no later than one month from the date of receiving an inquiry¹¹.

Access to the ecological information relating to the procedure of an assessment of impact on the environment and decision-making process on planned economic and other activity, is provided in an order established by the authorized body in the field of environmental protection.

Providing ecological information it can be refused according to article 167 of the Ecological code of the Republic of Kazakhstan¹².

Providing ecological information to physical and legal entities it can be refused on the following bases:

- 1) the request is formulated in general terms and does not establish those facts and the data that is requested by the applicant;
- 2) absence of required information;
- 3) the request relates to information and data with restricted access in accordance with the laws of the Republic of Kazakhstan.

Refusal in providing ecological information goes to the applicant no later than one month from the date of it being received. Refusal is provided in written form with the indication of the reasons and the basis for refusal, opportunities for its appeal the applicant, and also in the cases provided

¹¹ The code of the Republic of Kazakhstan of January 9, 2007, No. 212-III „Ecological code of the Republic of Kazakhstan” (with changes and additions as of 24.12.2012), Information System „Paragraph”, 2013.

¹² The order of the Minister of environmental protection of the Republic of Kazakhstan of July 25, 2007, No. 238-p „on approval of rules of access to the ecological information relating to procedure of an assessment of impact on environment and decision-making process on planned economic and other activity”, Information System „Paragraph”, 2013.

by point 4 of article 165 of the Ecological Code, includes the notice of the forwarding of the received inquiry to a competent government body.

Refusal in providing, not providing incomplete or misleading environmental information, and false attribution of environmental information to the public information with limited access may be appealed to a higher state authority and (or) the officer or the court.

For providing ecological information collects the payment which isn't exceeding the actual expenses for copying, search and information preparation. The payment raised by the government body for providing ecological information, is transferred to the revenue code corresponding budget public body. Providing ecological information by the government body by means of the public state electronic register and the inventory of ecological information is free of charge.

In the case of ecological information, meaning has not only its contents, but also a granting form. The Aarhus Convention and the Environmental Code provide for the varied ways in which environmental information is provided to the public. It can be documents on paper, and computer files, and also photos, illustrations, video both audio recordings and other material forms of information.

In many cases the form of required information has essential value for the applicant, and he can demand to provide it in a certain form. So, in modern conditions information work is more and more conducted with information in electronic form, which replaces the circulation of paper documents.

Quite often government bodies refuse providing information, referring to need of providing by the applicants of confirming documents on information request. Many requests for information are ignored only because they don't concern information on benefits, social assignments and other personal data. And such an approach from a position of the constitutional norm is quite lawful, namely item 3 of Art. 18 of the Constitution oblige to provide to each citizen opportunity to study documents, decisions and information sources mentioning his rights and interests. And this norm is treated and, respectively, is realized by officials in its narrow contents. The Constitution, unfortunately, does not contain standards to ensure full transparency in public administration.

Those results to which organizers „Researches of access to information, supported by Fund Soros Kazakhstan” are significant. During this project some public organizations sent to practically all government bodies of republican and regional level requests for providing socially significant information. As authors of inquiries acted like public organizations, journalists and representatives of social and vulnerable groups. As a whole 1100 conversion were directed and from them 48% answers were received, thus full information was provided to 31%, 10% government bodies provided incomplete information, and 7% access to information was refused. Such experiments testify that full information is provided only for 1 in three cases. Many government bodies violate the constitutional right of citizens on obtaining information.

In this aspect, quite revealing are the actions of public authorities to refuse to provide information on issues related to the issues of mandatory access. Thus, the human rights society „Green Rescue” repeatedly submitted requests to the „Kazatomprom” for the purpose of obtaining information on consequences of production of uranium in the republic and their actions on their elimination, and also about burials of secondary raw materials of this dangerous production. On the basis of a number of refusals this organization filed a lawsuit claim against the President of „Kazatomprom” M.E. Dzhakishev. However and judicial authorities couldn't provide access of public association material to the required information. Though information on a condition of the ecological environment is open and isn't subject to a classification.

The position of director of the program „Legal reform” of the Soros Foundation-Kazakhstan Saul Mektepbayeva on this issue is quite specific: „The understanding of the Basic law guaranteeing access only to personal data of the citizen narrows the sense of the constitutional norm and doesn't correspond to the principle of free obtaining of information on the activity of the government bodies working for taxpayers money”¹³. Besides, the right to information is considered from the political point of view, namely as a tool for government transparency and citizen participation in governance.

¹³ The right of citizens to access to information in interpretation of government bodies, www.soros.kz.

The solution for the current situation seems an adoption of the special law regulating direct realization of the right of physical and legal entities on information. Offered a different version of the name of the bill, but no one doubts the need for and importance of such a regulation, which is opposed to the views of officials that there are a number of laws that reinforce certain aspects of access or refusal to supply information. However practice shows that systematization and improvement of existing norms, and also development of new laws which in detail would regulate various aspects of information in turn, the main aspects of the legal status of subjects of information legal relations. Besides, it should be noted and that factor that legal literacy of the population has not reached a level where citizens could freely be guided in the existing legislation, know, what regulations consider these or those aspects of this problem especially as the majority of them received consideration in special departments¹⁴. Systematization of special norms in the uniform statutory act will allow the legislator to reveal existing problems and collisions. Be afraid to take the „extra” law on traffic information can not be compared to foreign practices, only the U.S. experience (more than 500 laws on this issue) suggests that the Kazakh information legislation is just beginning to develop.

Streszczenie

Aktywny i skuteczny udział wszystkich obywateli i instytucji społeczeństwa obywatelskiego w procesach decyzyjnych w zakresie ochrony środowiska uznawany jest za jeden z najważniejszych warunków zrównoważonego rozwoju nowoczesnej społeczności międzynarodowej. Społeczeństwo może skutecznie uczestniczyć w rozwiązywaniu problemów ochrony środowiska, wtedy gdy jest informowane o istniejących zagrożeniach dla środowiska naturalnego i zdrowia obywateli. Ważne jest, aby stworzyć odpowiednie warunki udostępniania informacji na ten temat przez rząd, a także organizacje i przedsiębiorstwa, których działalność ma lub może mieć negatywny wpływ na stan środowiska.

¹⁴ A.E. Zhatkanbayeva, *Theoretical problems of constitutional and legal information security in the Republic of Kazakhstan*, dissertation of doctor in law, Almaty 2009, s. 288.

Абстракт

Активное и эффективное участие граждан и институтов гражданского общества в процессах принятия решений по вопросам охраны окружающей среды признается одной из важных предпосылок для устойчивого развития современного международного сообщества. Общественность может эффективно участвовать в решении экологических проблем, когда она осведомлена о существующих угрозах окружающей среде и здоровью граждан. Важно создать условия для получения информации по запросу из государственных органов, а также организаций и предприятий, деятельность которых оказывает или может оказать негативное воздействие на экологическую ситуацию.