

---

**ICWC TRAINING CENTRE SEMINAR**  
**“INTERNATIONAL AND NATIONAL WATER LAW AND POLICY”**  
**SEPTEMBER 24 – 29, 2001**

---

**NATIONAL WATER LAW OF KAZAKHSTAN; ITS COORDINATION WITH  
INTERNATIONAL WATER LAW. PRIORITIES AND PROBLEMS. LINE OF  
ACTIVITIES FOR IMPROVEMENT.**

A.M. Ramazanov<sup>1</sup>

**INTRODUCTION**

Water resources are one of the main conditions of production development, satisfying population needs in water, ecological problems solution.

Significant part of the territory of Kazakhstan is located in lower reaches of main transboundary rivers that seriously influence on these regions water availability. Major rivers of the country Irtish, Ili, SyrDarya, Ural, Chu, Talas are transboundary ones. From the territory of adjacent states – China, Kyrgyzstan, Russia and Uzbekistan about half of water resources are coming on which water availability of the country depends. On water availability the republic is on the last place amongst CIS countries.

Kazakhstan possesses huge natural potential for economy development having rich supplies of oil, gas, coal, non-ferrous and ferrous metals, chemicals raw materials, land fund. Development of these resources as well as economy of separate cities development, territorial complexes and oblasts are restricted by water resources scarcity. In all basins, except Irtish basin, they are fully involved in economic utilization.

Post-Soviet period is characterized for Kazakhstan by attempts to solve ecological problems given to it as heritage which are dangerous in economic and social aspects. The Aral sea and Semipalatinsk polygon are permanent factors of ecological crisis negatively influencing social-economic situation both inside the country and on neighboring countries.

Legal bases in natural resources are linked with the formation of new economic conditions. In this connection, in accordance with President Decree of July 15, 1992 «About measures on Kazakhstan development strategy as a sovereign state» in 1993 national program of rational natural resources use and Concept of state ecological policy are developed. In spite of positive role of these documents, main disadvantage is old approach to environment protection issues without taking into account legal base development. These shortcomings were partially eliminated In newly accepted law “About environment protection” of July 15, 1997, “About ecological expertise” of March 18, 1997.

Transition from administrative-command system to economic one requires relevant legal warranty fixed in legislative acts. Acts being accepted last time and directed to social-economic relations improvement relate to environment issues and natural resources rational use.

Specific feature of nature protection activity is transition from declared rights and obligations of the citizens to their concrete distribution between the bodies responsible for environment

---

<sup>1</sup> Chairman of the Committee for Water Resources of the Ministry of Natural Resources and Environmental Protection of the Republic of Kazakhstan, Kokshetau, Kazakhstan

protection, economic methods of nature utilization and responsibility for environment pollution. In general, legal base for transition to economic methods has been formed.

Further legislative development in nature protection and natural resources use are recognized as prior in the president Decrees of 1997-1998. This was reflected in Kazakhstan development strategy-2030.

In accordance with given strategy prior tasks are as follow:

- Water resources protection охрана водных ресурсов;
- Water resources rational use;
- Water resources effective management;
- Drinking water quality improvement;
- South and West of the Republic provision with water resources.

## **NATIONAL WATER RIGHT**

### **The Republic of Kazakhstan Constitution**

*State bodies regulating water relations:*

1. Water Code of the Republic of Kazakhstan dated 31. 03. 1993
2. Civil Code of the Republic of Kazakhstan.
3. Law “About joining Convention on transboundary watercourses and international lakes protection and use of 17.03.1992” dated 23.10.2000
4. Law “About environment protection” dated 15. 07. 2001
5. President Decree «About depths and its use ” dated 27. 01. 1996
6. Law “About national security” 26. 06. 1994.
7. Law “About sanitary-epidemiological well-being” dated 08. 07. 1994
8. Law “About protected natural areas” dated 15. 07. 1997.

*Legislative acts, determining responsibility for water legislations violation:*

1. Code of the Republic of Kazakhstan “About administrative law violation” dated 30. 01. 2001
2. Criminal Code of the Republic of Kazakhstan.
3. Civil Procedural .Code of the Republic of Kazakhstan
4. Criminal-Procedural Code of the Republic of Kazakhstan.

In accordance with item 3 Article 6 of the Constitution and Article 193 of the Civil Code of the Republic of Kazakhstan its land and depths, wild life and other natural resources are in state ownership.

According to item 1 Article 21 of the Law “About national security” nature protection and rational natural resource use is obligation of state agencies, organizations and citizens.

In accordance with Article 43of the law “About environment protection” lands, water, atmosphere, forest and wild life are subjected to protection from degradation, pollution, exhaustion and irrational use.

Government of the Republic of Kazakhstan according to items 2) and 3) of Article 7 of the President Decree dated 27.01.1996 № 2828 “About depths and its use” establishes rules for depths use and protection, defines depths parts used for state needs in strategic and deficit mineral row materials, set restrictions in interest of national security, environment protection, population safety, natural resources conservation for future generations.

In order to realize President Decree, Government Provision dated 27.01.1997 № 106 has been approved which defines objectives and tasks of state depths monitoring, its structure and order. Its goal is information provision of rational natural resources use including ground water and depths protection.

Order of harmful matters and wastes release as well as documents inventory required for harmful matters and wastes release collection, treatment and disposal is determined by the Government Provision dated 18.10.1996 № 1286.

Besides, there are single rules of depths protection when mining work conducting, approved by Government Provision dated 21.07.1999 № 1019.

Administrative and criminal responsibility for water legislative violation are determined by the Code "About administrative violations" and Criminal Code.

To establish legal base of water rational use for population needs, economic branches and environment, water resources protection from pollution and exhaustion, harmful water impact elimination Water Code has been accepted on 31.03.1993

Main by-laws in water relations accepted by the Government of the Republic of Kazakhstan, are the following:

1. About order of water use for fire elimination, 19.08.1994 , № 930;
2. About water ways consideration as navigation courses, 19.08.1994, № 931;
3. About of water use and protection complex scheme development and approval, 19.08.2001, № 932;
4. About order of special water use permission coordination and issue, 29.12.1994 , №1482;
5. About water bodies transfer in solitary use, 29.12.1994 , № 1483;
6. About water bodies use for air-transport needs, 30.12.1994 , № 1491;
7. About Water Cadastre conducting , 24.01.1995, № 75;
8. About water bodies (ground water) inventory approval for recreation needs of the republican meaning;
9. About approval of the provision on order of water use and state registration, 15.02.1995 , № 160;
10. About approval of water bodies of state meaning inventory which use can be restricted or prohibited , 03.03.1995, № 218;
11. About approval of the provision on state control over water resources use and protection, 29.04.1995, № 600;
12. About approval of the provision on depths state monitoring, 27.01.1997, № 106;
13. About approval of the provision on depths protection when mining work on oil, gas, ground water conducting, 21.07.1999., № 1019;
14. About approval of the order of harmful matters and wastes disposal, 18.10.1996., № 1286;
15. About approval of the provision on environment and natural resources single monitoring system, 27.06.2001, № 885;
16. About approval of the provision on surface water use charges over the branches of the Republic of Kazakhstan, 07.08.1997., № 1227.

In accordance with item 1 Article 11 of the Code, water resources management is executed by the government, local authorities, state water agency within their competence. Government establishes water charges from surface and ground sources.

Water use is immediately regulated by the Code section 2. According to Code Article 26 water use is divided for common and special. Common water use is applied for population needs and

does not use technique influencing water state. Special water use is devoted to satisfy population, agriculture, industry, municipal, water transport and power engineering needs with equipment mentioned in item 1 Article 28 of the Code.

According to the Code items 1 and 2 Article 47 common water use is executed free of charge. Special water use is paid. Charges take into consideration water quality, water body location and water use conditions.

Earlier water charges were established by the Government Provision dated 31.12.1996 № 1744. Government Provision dated 07.08.1997 № 1227 has set order of water charges calculation, collection and payment for water use from surface sources over economic branches

It worth to note additionally, that water charges for water use from surface sources was already established by Article 82 of Tax Code dated 12.06.2001 № 209. Based on above mentioned, it is necessary to underline, that water charges are regulated by several acts of the Republic of Kazakhstan. Nevertheless, since Water Code acceptance many amendments in legal base of the republic were made. Because of that necessity appears to revise Water Code according to Constitution, Civil Code, Code “About administrative violations”, laws “About environment protection”, “About land”, etc. Besides, Water Code is not linked with issues of privatization, bankruptcy procedure, economy restructuring, different forms of property, etc.

In water sector itself changes take place connected with management structures improvement directed to single economic complex creation functioning on the principles combining basin and administrative (territorial) approaches, which allow to provide: National water policy realization within existing economic relations, interstate collaboration in transboundary rivers flow regulation and ecosystems preservation.

That is why, Existing Code bottleneck is institutional-legal scheme of water resources management. Code’s provisions regulating inter-branch water policy formation and realization are obsolete. For instance, Article 11 states : “Water resources are managed by the government, local authorities, state water agency and special authorized state bodies...”

The same is occur with state control over water use and protection which, according to Article 17 “is executed by the government, local authorities, state water agency and special authorized state bodies ”. Besides, in Article 17 water resources use control tasks, functions and authorities are not determined. Declarative character of articles 111 (State Water Cadastre), 112 (Water Monitoring) and 113 (Water-economic balances) is evident.

Kazakhstan is water scarce country – half of surface runoff is formed beyond the country. It means that water resources protection from pollution and exhaustion depends on amount and quality of water coming to the country from China, Russia, Uzbekistan and Kyrgyz tan. But Article XIX does not touch this question and ways of its resolution.

In this connection Committee of Water Resources started to work on new Water Code preparation. Main requirements for its development are defined the following:

- Relevance to modern legal, economic and ecological relations in water regulation area;
- Definition and strengthening more perfect institutionally-legal and economic scheme of management (water use economic mechanism, state registration, monitoring, water cadastre, state control over water resources use and protection, limits establishing, permitting system, etc.), providing water resources rational use and protection for current and future generations;

- Relevance to norms of international treaties on water use and protection, ratified by the Republic of Kazakhstan.

## **WATER RELATIONS IN THE REPUBLIC OF KAZAKHSTAN IN ACCORDANCE WITH INTERNATIONAL WATER RIGHT**

Through the Law dated 23.10.2000 № 94-II the Republic of Kazakhstan has joined Convention on Transboundary Water Courses and International Lakes use and protection of 17.03.1992. This Convention covers wide range of questions concerning transboundary water courses use and protection. For example, according to the Convention, Part 1 parties take necessary measures on water pollution, which have transboundary effect, prevention, limiting and reduction. Convention parties are directed by principles of necessary measures undertaking irrespectively of the fact, are reasons and impact of harmful matters on transboundary waters pollution clear or not, by principle “polluter pays”, according to which expenses for pollution prevention, restriction and reduction are covered by polluter, water resources management is executed such a way in order do not harm future generations.

Simultaneously, it worth to note, that Convention mostly includes norms of declarative character and references to international treaties and agreements. There is no specific mechanism of countries-participants interaction in transboundary water courses and international lakes use and protection problems resolution in the Convention. In this connection question is risen about this Convention application effectiveness.

At present time 34 states are participants of the Convention including Russia, Great Britain, Germany, France, etc. China, Turkmenistan, Kyrgyz tan, Tajikistan, Uzbekistan did not join this Convention.

Comparative analysis showed that Convention on right of non-navigation use of international water courses dated 21.05.1997 (here and after – Convention on right of non-navigation watercourses) is more effective to compare with precedent:

*According to this Convention watercourse means a single interrelated system of surface and ground waters; international watercourse means watercourse parts of which are located in different states.*

According to item 1 of Article 5 of Convention on right of non-navigation watercourses states use this watercourse within their territory in reasonable and equitable way. In particular, international watercourse is used by the states with purpose of its optimal use and obtaining benefits with regard for interests of other states and course protection. Item 1 of Article 6 requires to take into account all circumstances including: a) geographic, hydrographic, hydrological, climatic, ecological and other natural factors; b) socio-economic needs of watercourse’s states; c) population dependence on watercourse in each state; d) impact of one or several types of use in one state on the others; e) existing and potential uses of watercourse; f) water resources conservation, protection, development and use effectiveness; g) alternatives to existing water uses availability.

According to Article 11 of Convention on the right of non-navigation watercourses, states forward notification before to take any measures which can impact other states and, if necessary negotiate about these measures or international watercourse state.

It worth to note, that provisions of the Article 12 of the Convention foresees, before taking measures by one state, which can effects other states, notification to other states accompanying by

technical data and information including results of ecologic expertise in order other states understand possible consequences of these measures.

Peculiarity of the Convention is its use for purposes differing from navigation for protection and management of international watercourses. Watercourses use for navigation is not include in the Convention except those cases when other uses touch navigation or when navigation touches them.

It worth also to note, that, according to Convention, *regional organization of economic integration* means organization, established by sovereign states of specific region, to which states forward competence in questions, regulated by Convention, and which is authorized to sign, ratify and approve Convention or to join it.

Twenty countries are Convention participants including: Finland, Germany, Luxemburg, Norway, SAR, Sweden, Tunis, Venezuela, etc. China, Tajikistan, Turkmenistan, Kyrgyzstan and Uzbekistan did not join this Convention.

Within CIS framework in 1992 Agreement on interaction in sphere of environment protection (here and after-Agreement) was signed. According to Article 1 of the Agreement parties develop and coordinate the environmental policy (land, soil, fauna and flora, atmosphere air, natural resources of continental shelf, economic zone and open sea byond national jurisdiction) with regard for early signed by former USSR agreements.

According to the Article 2of the Agreement, parties take obligation to use natural resources reasonably, to set limits of their irreversible diversion with respect of common ecological security and well-being, to observe obligations on international agreements.

According to the Article 3 of the Agreement, to provide agreed policy in environment protection, parties recognize necessity to develop and implement jointly interstate programs and projects in environmental security, use agreed methodologies when assessing impact og any activity on environment, create and maintain ecological information system and provide information to other parties.

For fulfillment of provisions, foreseen by the Article 3 of the Agreement, parties agreed to establish International Environmental Council and International Environmental Foundation for fulfillment of agreed interstate ecological programs, in first turn, for mitigation of natural disasters consequences. Order of establishing and functioning of this Foundation is determined by Interstate Environmental Council.

Parties charge the Interstate Environmental Council to coordinate and conduct agreed policy in environment protection, conducting ecological expertise, with participation of parties concerned, of the programs and forecasts of economic development, investment and other projects, which implementation touches other parties, assistance in ecological disputes resolution

Interstate Environmental Council consists of environmental agencies leaders from states-participants of the Agreement and acts on base of parity and consensus.

Thus, within the framework of CIS there is legal base for regulation of interrelations on the questions connected with water use.

Taking into account above mentioned, Interstate Environmental Council can be defined as the *regional organization of economic integration* according to Convention on non-navigation watercourses. This circumstance will allow in perspective to join Convention on non-navigation

watercourses, that will create necessary conditions for disputable water supply questions resolution in the Central-Asian region.