

FaR 2021

International Forum “Freedom and responsibility in pivotal times”

**LEGAL ISSUES OF THE REGULATION OF ENVIRONMENTAL
PAYMENTS**

Y. Gavrilova (a)*, E. Shcherbik (b), Y. Novitskaya (c)

*Corresponding author

(a) Kazakh-American Free University, M. Gorkiy street 76, Ust-Kamenogorsk, East Kazakhstan Region,
Kazakhstan, gavriloyuliya@yandex.kz

(b) Nizhnevartovsk State University, Lenina Street 56, Nizhnevartovsk, Russia, zemaid@rambler.ru

(c) Kazakh-American Free University, M. Gorkiy street 76, Ust-Kamenogorsk, East Kazakhstan Region, Kazakhstan,
ynovitskaya@gmail.com**Abstract**

The analysis of scientific environmental and legal literature, carried out by the authors of the article, showed that environmental payments serve as an instrument of the economic mechanism of environmental protection and the main purpose of their collection should be to preserve the quality of the environment and its resources. However, experience has shown that payments to the budget for the use of natural resources and for the negative impact on the natural environment are not spent adequately and are often aimed not at the environment protection activities, which runs counter to their initial ecological purpose. In order to ensure that environmental payments do not lose their value, the authors of the article, exploring the experience of some countries of Eastern Europe, the Caucasus and Central Asia, propose to establish special state environment funds, which will ensure their targeted nature, and will help to stimulate the legitimate environmental behavior of natural resource users. The establishment of environmental funds should be accompanied by detailed legal regulation of their functioning, including the development of a strict control mechanism over the spending of funds received for environment protection. It is necessary to direct environmental payments strictly to environment protection and nature restoration activities, i.e. all funds received from the collection of environmental payments, damage to the environment, as well as fines for violations in the field of the environment law should be targeted and used exclusively to finance environmental initiatives and projects.

2357-1330 © 2022 Published by European Publisher.

Keywords: Environmental payments, economic mechanism, environment fund

This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial 4.0 Unported License, permitting all non-commercial use, distribution, and reproduction in any medium, provided the original work is properly cited.

1. Introduction

The issue of using economic instruments in environment protection and ensuring rational use of natural resources is one of the most complex and least developed in the theory of environmental law. There is still no consensus about what can be referred to as economic and legal means and what is meant by environmental taxes, fees and charges and how they differ from each other. But science, lawmaking and practice do not stand still: in each of these areas, attempts are made to find optimal solutions. New methods of economic impact have been especially actively tested in recent years which is caused by market reforms in the country, intensive development of environmental and tax legislation, and general deterioration of the environment. Therefore, the attention of those studying jurisprudence in the field of ecology is directed to the system of economic and legal means of protecting the environment and their structures (Sarkissov, 2014).

In the Russian natural resource and ecological legal science, the issues of the economic mechanism of environmental protection have been reflected in the studies of such well-known legal scholars as M.M. Brinchuk, S.A. Bogolyubov, A.K. Golichenkov, B.V. Yerofeyev, O.S. Kolbassov, O.I. Krassov, E.V. Novikova, V.V. Petrov, T.V. Petrova and others. A.V. Ushakov, E.B. Shuvalova, M.S. Gordienko, N.V. Sibatulin and others devoted their works to studying certain types of environmental payments.

In Kazakhstani modern legal science, only certain aspects of the economic mechanism for environmental protection and use of certain natural resources in the Republic of Kazakhstan are being currently developed: improving the state administration and economic mechanism in the field of environmental protection and nature management; legal institution of compensation for environmental damage; conceptual foundations of land payments; principles of payment for subsoil use; essence and content of economic mechanisms of land relations; organizational and legal support of agrarian relations, etc. A significant contribution to the development of environmental and legal institutions closely interrelated with environmental payments was made by Kazakhstani legal scholars: G.T. Aigarinova, M.A. Alenov, A.N. Alchinbayeva, A.P. Assylbekov, N.S. Baimbetov, A.K. Kurmanova, S.T. Kulteleyev, G.M. Tlebayeva, A.D. Tundikbayev, S.Sh. Tyuleubekova and others. At the same time, the points of view of scientists regarding the concept of “economic mechanism of environmental protection and nature management” and its definition, confirm the controversial nature of the problem of economic regulation in the area under consideration. In this context, it is appropriate to emphasize that in today’s world there are more than 80 instruments of economic regulation of environmental protection, but the ideal model of such a mechanism has not been developed.

2. Problem Statement

Most legal scholars consider environmental payments as instruments of the economic mechanism for environmental protection, and use this definition as a collective concept that acts as a “force field” for the integration of all norms governing taxes, fees and payments for the use of certain natural resources, for emissions into the environment as a whole. At the same time, the integration of payments of various legal nature does not provide for the loss of their specificity. On the contrary, it should contribute to enrichment, interpenetration, development of norms in the field of environmental payments. We approach the

consideration of legal problems related to environmental payments from the position that environmental payments should be an institution of not financial, not tax law, but environmental law, which will help prevent negative consequences for the society and the environment.

The very term “environmental” emphasizes the industry affiliation of payments and determines their intended purpose. It is quite obvious that payments will be ecological only if the main purpose of their collection is the safeguarding of the quality of the environment and its resources. If this safeguarding is a means of achieving a different result, which is necessary and desirable for the subject of environmental relations, then such payments cannot be referred to as environmental payments. Therefore, the legislator must at the same time ensure, through environmental payments, the fullest possible protection of the elements of the natural environment.

3. Research Questions

Based on the studied economic and legal literature, as well as statistical data related to the payment of environmental fees, the authors discuss the following:

- 3.1. Environmental payments, as elements of the economic mechanism for environment protection, are an institution of environmental law.
- 3.2. Environmental payments should be targeted, i.e. being accumulated in a single state ecological fund, they should be directed strictly to nature conservation and nature restoration activities.

4. Purpose of the Study

The purpose of the article is to consider the problems associated with the legal support of environmental payments and propose ways to solve them.

5. Research Methods

The work applies methods of systemic, legal and logical analysis. Particular importance is given to a comparative legal analysis, the use of which made it possible for the authors to draw important conclusions.

6. Findings

How does it work in practice? Let us give an example of paying the environmental charges by a certain specific Kazakhstani enterprise - a subsoil user – “Sokolovsko-Sorbaysky Mining and Processing Production Association (SSMPPA)”, which is the largest mining enterprise in Kostanay region and one of the largest taxpayers in the country (Table 01).

According to the Budget Code of the Republic of Kazakhstan, the regional budget receives: payments for emissions into the environment; payments for the use of surface water resources; fines, penalties, sanctions, penalties imposed by the state institutions financed from the regional budget (Article 50. Revenues to the regional budget). The budget of the city of Rudny receives payments for the use of land

plots and fines imposed by state institutions financed from the district (cities of the regional values) budget (Article. 52. Incomes to the district (cities of regional significance) budget). In addition to payments to the budget, in case of violation of environmental legislation, persons who have caused damage to the environment reimburse it. This payment is called “Funds received from users of natural resources in claims for compensation for harm”. Reimbursement is subject to damage caused to the environment, health of population, property of individuals and legal entities and the state as a result of: 1) destruction and damage of natural resources; 2) illegal and irrational use of natural resources; 3) unauthorized emissions; 4) excess emissions. Such payments go to the National budget» (Lobacheva, 2021).

According to the current tax legislation of the Republic of Kazakhstan, “various types of environmental payments go to the city, regional, and national budgets, respectively”.

Table 1. SSMPPA environmental payments in 2016–2019 (thous. tenge)

	SSMPPA	2017	2018	2019	total	Budget level
	payments related to ecological impact					
1	Land use fee	739 206,00	681 387,00	763 104,00	2 183 697,00	Municipal
2	Payments for emissions into the environment	2 068 950,00	2 486 728,00	2 984 123,00	7 539 801,00	Regional
3	Payments for the use of surface water resources	3 371,00	4 237,00	4 192,00	11 800,00	Regional
4	Funds received from users of natural resources in claims for compensation for harm	42,00	0,00	0,00	42,00	National
	Total	2 811 569,00	3 172,00	3 751 419,00	9 735 340,00	

How were the budget receipts spent? The development plan for the territory of Rudny for 2016-2020 lists the following activities aimed at improving the quality of the environment:

- collection and disposal of household wastes of the population;
- bringing solid waste landfills in line with environmental requirements;
- monitoring of the processing of municipal wastes;
- environmental education, edification and propaganda;
- ensuring sustainable development of wastewater disposal facilities by constructing and reconstructing the facilities. It was proposed to spend 33 342 thousand tenge on the above mentioned activities, which is 65 times less than the amount of receipts for the use of land resources» (Lobacheva, 2021).

This example shows that only a small amount of environmental payments received by the budget are spent on the activities related to environmental protection. At the same time, we note that the funds are spent for the restoration or improvement of that natural resource, for the use of which this payment was received by the budget. Thus, considering the above example, we emphasize that not a single tenge in the

local budget was allocated for land restoration or other activities related to improving the quality of land as a natural resource!

This situation is typical for the whole country of Kazakhstan, where all revenues from “environmental” payments to the budget (payments for emissions into the environment, fines, compensation for environmental damage, payments for nature use) are actually not targeted. «In practice, only a very insignificant part of the funds raised is ultimately directed towards solving environmental problems. In some regions, environmental costs are estimated to be as low as 0.1% to 2.2% of payments received.

The use of environmental payments with the main purpose of replenishing the budget, and not in order to stimulate the prevention and reduction of harmful effects on the environment, as well as its restoration as a result of anthropogenic impact, deprives them of the function of a full-fledged instrument of economic regulation of environmental protection and nature management, since they do not have any significant impact on improving the state of the environment, but only increase the cost of doing business in Kazakhstan.

In this regard, it is necessary to radically change the approach to spending state budget funds for environmental protection and nature restoration activities. All funds received from the collection of environmental fees, damage to the environment, as well as fines for violations in the field of ecology should be targeted and used exclusively to finance environmental initiatives and projects. This approach will make it possible to impart a stimulating nature conservation and nature restoration function to the emission fee» (Draft Law of the Republic of Kazakhstan..., 2020).

In addition to the inappropriate nature of environmental payments, there is a problem of the lack of special national environmental funds.

Due to the absence of an environmental fund, there is no relationship between the expenditure of budgetary resources on environmental issues and the received environmental revenues (Environmental Payments for Pollution and Production in Armenia: evaluation of the implementation of reforms and directions for further improvement, 2004).

World environmental practice knows many examples of the existence of environmental funds, where all environmental revenues are concentrated, which are then directed specifically to environmental costs. The legal basis for the functioning of these funds are special laws on environmental funds, which provide for control measures for the targeted spending of funds.

“In the 1990s, environmental funds in the EECCA region (Eastern Europe, the Caucasus and Central Asia) served as one of the main sources of domestic public environmental financing which subsidized priority environmental actions” (The role of national environmental funds in promoting green investments, 2019).

«Until 2021, the Republic of Kazakhstan, also had a legal basis for the creation of state environmental funds, which was preceded by territorial funds for nature protection, formed in accordance with the resolutions of the Central Committee of the CPSU and the Council of Ministers of the USSR as of January 7, 1988, resolution “On the fundamental restructuring of nature protection in the country” of the Council of Ministers of the USSR as of March 18, 1988, resolution No. 93 of the territorial, regional, city executive committees of the councils of people’s deputies. The main sources of payments to the budget

were basically the same as those included later into the law “On Environmental Protection”: payments for environmental pollution; funds collected in order to compensate for harm caused to the environment; voluntary contributions from citizens, organizations, etc. It was supposed to use money from funds for the construction of waste treatment facilities, technical re-equipment and reconstruction of enterprises, financing of development and implementation of environmental technologies, new types of equipment, and more.

It is noteworthy that at that stage a mechanism was created to ensure the preferential use of the collected fees for financing environmental activities of organizations - payers of the funds» ... (Sharipbekov, 2009). Unfortunately, «in 2001 the Republic of Kazakhstan repealed legislation on environmental funds; and payments for pollution began to flow into the general budget without the possibility of controlling their intended use» (Sharipbekov, 2009).

Let us pay attention to one of the mentioned EECCA countries - the Republic of Azerbaijan, where currently there are both state and public environmental funds. The state fund receives payments from users of natural resources, fines for violating the environmental legislation of Azerbaijan, funds from the sale of confiscated hunting tools and illegal fishing means, voluntary contributions, etc.

Article 28 of the Law “On Environmental Protection of the Republic of Azerbaijan” lists possible targeted uses of funds allocated from state environmental funds. These are financing of environment protection activities, compensation for environmental damage caused to the environment, scientific research, construction and reconstruction of facilities related to environment protection, compensation environmental payments to citizens affected by adverse environmental impacts, environmental education and training, etc. In other words, payments from natural resource users to environmental funds are of an environmental nature, since they are accumulated in environmental funds, the capitals of which are prohibited from being used for activities not related to environment protection.

In the Republic of Kyrgyzstan, there are national and regional funds for nature protection, which receive both payments for nature use and “for damage resulting from illegal economic activity, inadequate environmental management or unlicensed activities carried out by organizations or individuals” (Environmental Performance Review, 2000). Half of the expenditures from the National Fund are directed to the maintenance of the environmental department of Kyrgyzstan, and the other half - to activities of ecological educational and educational nature.

Also, in Kyrgyzstan there is a Public Fund called “Fund for the Development of Nature”, created in 2017, the assets of which should “be used exclusively to finance projects on environmental protection and preservation of natural resources of the Kyrgyz Republic, as well as for the purposes stipulated by the charter of the Fund” (On creation of the Public Fund “Fund for the Development of Nature”..., 2021). This Fund exists at the expense of payments from foreign users of natural resources, and control is carried out in the form of annual audits.

In the Republic of Moldova, as in the Republic of Kyrgyzstan, there is a National Environmental Fund, where environmental payments are accumulated. However, as the state authorities note, “the lion’s share of all funds of the National Ecological Fund, which is about 14 million euros per year, is used from year to year for purposes not related to the protection of natural resources - water supply and sewerage (in 2019 - 94.17% of the Fund’s resources, and in 2020 - 84.15%). Not a lei was spent on biodiversity

conservation in 2019, and in 2020 - 0.2% of the Fund's funds, while these funds were intended for environmental purposes, including the expansion of the areas covered with forest" (Ecologists warn that without state funding for the reserves of Moldova, we can lose forests and nature, 2021).

The Republic of Uzbekistan, unlike Kyrgyzstan, in 2017 united the Republican and regional environmental funds into the Unified Fund for Ecology, Environmental Protection and Waste Management. "The Fund's sources of income are payments for environmental pollution, fines for violation of environmental standards and damage to the environment, as well as payments for felling trees outside the state forest fund. Since the beginning of 2018, the share of revenues from payments for environmental pollution that goes to the Fund has increased to 74% compared to 40% in 2009" (Series of Environmental Performance Reviews, 2020). It can be seen from Table 02 below that during the year of the Unified Fund's existence since its inception, spending on environmental measures has increased 2.7 times.

Table 2. Spending of the environmental fund, 2014-2018

	2014	2015	2016	2017	2018
Total, (bln. soms)	1.96	1.84	1.52	2.78	7.58
Total, (mln.dollars)	0.85	0.71	0.51	0.53	0.94
including (%)					
equity participation in project financing	25.19	47.41	73.66	17.97	82.31
territorial development for environmental protection	23.51	32.63	18.20	2.41	0.00
construction and maintenance of environmental protection facilities	30.44	7.28	1.52	49.96	4.15
environmental education	6.49	2.23	3.06	2.88	0.00
research, design and survey and development works	6.00	2.68	0.65	19.86	4.55
Other	8.36	7.76	2.90	6.92	9.00

Source: State Committee for Ecology and Environment Protection, 2019 Note: values in US dollar are given with consideration of the average exchange rate of the corresponding year

Environmental protection funds are created to finance urgent activities for environmental protection, liquidation and compensation of damage caused to it, activities aimed at the protection of greenery and other activities in the field of environmental protection.

In the Russian Federation, from 1992 to 2000 there were also environmental funds. "The practice of the existence of environmental funds has proved the economic feasibility of their activities, the role of which is notably growing under conditions of the severe deficit of financing for environmental protection" (Ilyicheva, 2007). At the same time, there was no full-fledged regulatory legal framework standardizing relations on the development of fund's spending patterns (Navassardova, 2013).

At present, the question of the need to resume the functioning of environmental funds is being raised in the Russian Federation. During the conference, Minister of Environment Protection of the Kirov Region Alla Albegova raised this issue. She noted that previously payments for the negative impact of enterprises on the environment went to targeted funds, and the funds were spent on environmental protection purposes. Today, compensations go to the revenue part of the budget, where they are "eroded" and do not actually return to the industry. (Experts suggested reviving targeted environmental funds in Russia, 2020).

7. Conclusion

Thus, without pretending to making an exhaustive list of problems associated with the legal regulation of environmental payments, we emphasize that the current environmental legislation does not give a clear idea of the content of the concept of “economic mechanism for environmental protection and nature management”. Criteria for the inclusion of certain environmental institutions as measures of economic regulation have not been developed either. There is no consensus on this issue in the doctrine of environmental law. However, all scientists share the point of view that environmental payments are one of the main economic instruments for environmental protection and nature management, the development of which is conditioned by the development of market relations.

According to the majority of legal scholars, environmental payments should be an institution of neither financial, nor tax law, but environmental law, which will help prevent negative consequences for society and the environment. It is then that the compensatory function of environmental payments will be achievable, which is a priority in the opinion of the Russian legal scholar T.V. Petrova (Petrova, 2020). The compensatory function is that the accumulation of the entire volume of payments leads to their further redistribution in the budget for environmental protection activities (Ryzhenkov, 2014).

The concentration of environmental payments in special environmental funds, as well as the creation of detailed legal regulation of their functioning, including the creation of a strict control mechanism for the expenditure of funds received for environmental protection, will reflect their legal nature and the environmental nature of such payments, and also stimulate the payer to lawful, with the point of view of environment protection, behavior. In other words, the state needs to develop a clear concept of environmental funds, to establish a balance between the political, technical, financial and legal distribution of existing funds, the process of introducing and announcing the results achieved.

References

- Draft Law of the Republic of Kazakhstan "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Environmental Issues". (2020). https://atameken.kz/uploads/content/files/17_%20%D0%AD%D0%BA%D0%BE%D0%BB%D0%BE%D0%B3%D0%B8%D1%87%D0%B5%D1%81%D0%BA%D0%B8%D0%B9%20%D0%BA%D0%BE%D0%B4%D0%B5%D0%BA%D1%81_%D1%81%D0%BE%D0%BF%D1%83%D1%82_%D1%80%D1%83%D1%81.docx
- Ecologists warn that without state funding for the reserves of Moldova, we can lose forests and nature. (2021). <https://ava.md/2021/05/18/ekologi-preduprezhdayut-chto-bez-gosudarstvennogo/>
- Environmental Payments for Pollution and Production in Armenia: evaluation of the implementation of reforms and directions for further improvement. (2004). <https://www.oecd.org/env/outreach/34953278.pdf>
- Environmental Performance Review. (2000). Kyrgyzstan, UN, New York and Geneva. 23 p.
- Experts suggested reviving targeted environmental funds in Russia. (2020). <https://tass.ru/obschestvo/10029727>
- Ilyicheva, E. V. (2007). The system of ecological funds of Russia. <https://cyberleninka.ru/article/n/sistema-ekologicheskikh-fondov-rossii>.
- Lobacheva, M. (2021). Environmental payments of subsoil users and environmental protection measures implemented at the expense of the budget. https://echo.kz/images/reports/Environmental_payments_and_spendings.pdf

- Navassardova, E. S. (2013). Environmental funds as sources for financing ecology related activities: historical and legal analysis. *ekologicheskije-fondy-kak-istochniki-finansirovaniya-ekologicheskij- znachimyh-meropriyatiy-istoriko-pravovoy-analiz*
- On creation of the Public Fund “Fund for the Development of Nature”. Resolution of the Government of the Kyrgyz Republic. (2021). <http://cbd.minjust.gov.kg/act/view/ru-ru/11517?cl=ru-ru>
- Petrova, T. V. (2020). *Legal problems of the economic mechanism of environmental protection*, 84-86.
- Ryzhenkov, A. Ya. (2014). *The principle of payment for nature management in law*. Legal Concept.
- Sarkissov, O. R. (2014). C20 Environmental law: study manual for students of higher education and vocational institutions. *Education* (O.R. Sarkissov, E.L. Lyubarsky) 5th ed. Kazan, Center for Innovative Technologies. 335 p.
- Series of Environmental Performance Reviews. (2020). *Issue 52. United Nations*. 70. https://uzbekistan.un.org/sites/default/files/2020-10/ECE.CEP_.188.Rus__0.pdf
- Sharipbekov, Y. Y. (2009). Environmental funds and legal support of activities. <https://articlekz.com/article/6884>
- The role of national environmental funds in promoting green investments. (2019). <https://www.oecd.org/env/outreach/Item7-Role-of-National-Environmental-Funds-Discussion-Paper-RUS.pdf>