

Dissertation in support of the candidature of Aktoty Rzabay for the degree of Doctor of Philosophy (PhD) in specialty 6D030100 - "Jurisprudence" on the topic: "International legal sources of environmental law of the Republic of Kazakhstan"

## ANNOTATION

**General description.** The dissertation work is devoted to the study of the role and place of international legal norms on environmental protection and the use of natural resources in the general system of sources of environmental law of the Republic of Kazakhstan.

**Relevance.** Kazakhstan implements a multi-vector, pragmatic and pro-active foreign policy, makes a significant contribution to the formation and implementation of a global and regional agenda in the field of security, cooperation and development. Environmental degradation has become one of the most destabilizing factors in the world. The impact of climate change in Central Asia, in particular, will lead to serious existential problems such as desertification, melting of glaciers and subsequent depletion of drinking and irrigation water resources. In the foreign policy of the Republic of Kazakhstan for 2020-2030, outlined such basic priorities and principles in the field of environmental protection and nature management, as: prevention and elimination of the consequences of natural and man-made emergencies; cooperation with foreign partners and donors on the rehabilitation of the territories of the former Semipalatinsk nuclear test site and the Aral Sea, as well as on combating desertification; practical implementation, jointly with the Caspian countries, of the provisions of the "Framework Convention for the Protection of the Marine Environment of the Caspian Sea" and the protocols thereto; participation in international environmental and legal cooperation, including for the purpose of countering epidemics and pandemics.

In today's interconnected and interdependent world, the special role of international legal cooperation in the field of environmental protection and the use of natural resources in order to preserve and for the benefit of present and future generations is becoming increasingly clear. The legal norms created in the process of such interaction of states, united in an international treaty, cannot act in isolation, without interacting with the norms of national law. Moreover, such interaction is manifested in the allocation of a special category of sources of international law in the general system of sources of national law, and the constitutional and legal perception of international treaty norms can be characterized by the recognition of a separate, special priority position of such norms over them.

Today, the principle of the state's sovereignty over its natural resources requires scientific understanding and a "special" approach in defining the rights and obligations of states in ensuring environmental safety at the international level. On the one hand, states have the right to pursue their own economic and environmental policies, including the conservation and use of their natural resources and the free

disposal of their natural resources; on the other hand, obligations and obligations have arisen limiting the freedom of action of states.

Globalization processes, the integration of the economy of the Republic of Kazakhstan into world economic relations, the arrival of foreign investors in the subsoil use sector, the development of market relations, predetermine the need for a more flexible approach to the regulation of environmental relations based on the norms of national legislation and international legal acts ratified by the Republic of Kazakhstan. This circumstance implies the practice of subsidiary application of the norms of the legislation of the Republic of Kazakhstan and the norms of international legal acts in order to effectively manage the natural environment and ensure a fair balance of interests of the state, society and nature users.

The relevance of the chosen topic is due not only to the practice of applying international treaty norms in regulating relations in the field of environmental protection and the use of natural resources, but also by theory. The determination of the content of international legal documents determines the possibility of their attribution to the sources of environmental law, which is important for the theoretical development of environmental law problems, as well as for the practical implementation of international environmental obligations of our country. This is also important for law enforcement practice, in cases, especially when international legal acts have primacy over national law and are directly applied.

Constitutional recognition and perception of the norms of international treaties and, in particular, international environmental treaties of the Republic of Kazakhstan are directly reflected in the process of transformation of international environmental treaty norms of Kazakhstan into the current environmental legislation, which indicates the presence of a special category of sources of environmental law of the Republic of Kazakhstan, international sources. In general, the constitutional recognition of international obligations as valid law and the recognition of the primacy of ratified international legal norms over the norms of national legislation of the Republic of Kazakhstan, the active participation of Kazakhstan in the international environmental contractual process and, as a result, the impact of international contractual norms on the environmental legislation of our country, as well as the absence in legal science of special studies on the place and role of international legal norms recognized by the Republic of Kazakhstan in the general system of sources of environmental law of the Republic, predetermine the relevance of the selected topic of this dissertation research.

**Degree of elaboration of the research topic.** Analysis of existing scientific studies of domestic and foreign legal scholars in environmental law and, in particular, research, dedicated to the environmental legislation of the Republic of Kazakhstan indicates that no special comprehensive studies of the problematic issues of determining the legal nature and role of international legal norms in the field of environmental protection and the use of natural resources in the general

system of sources of environmental law of the Republic of Kazakhstan have been conducted.

Issues of the theory of the implementation of contractual norms into existing domestic law have not yet been the subject of special study in the science of environmental law of the Republic of Kazakhstan. The same situation has developed in other branches of law, where the influence of international law on the formation and improvement of special international legal sources of the industry is also recognized. but at the same time, researchers avoid the problematic and poorly studied issues of the theory of implementation of such norms, substantiating their position by the fact that such issues should be considered only within the framework of the science of international law. The material studied (monographs, scientific articles, theses, manuals), devoted to the theory of international law and, in particular, to theoretical issues of implementation, allows us to propose our own valid and valid conclusions and conclusions on this issue, which, in our opinion, it will help to eliminate gaps in the scientific approach to the process of forming special international legal sources of environmental law due to the implementation of the norms of international treaties recognized by the Republic of Kazakhstan in the current environmental legislation of the Republic.

Due to the specificity of international legal relations, the nature of international environmental treaties, they are the subject of research by domestic and foreign international lawyers, including M.A. Sarsembaeva, S.Zh. Aidarbaeva, A.A. Salimgere, A.K. Tastanova, O.N. Safonova, G.I. Tunkina, Yu.M. Kolosova, G.V. Ignatenko, I.I. Lukashuk, A.S. Timoshenko, E.N. Lisitsina, O.S. Kolbasova, E.A. Nesterenko and others.

Certain aspects of the general correlation of national and international law were considered in the works of S.Z. Zimanova, S.S. Sartaeva G.S. Sapargaliev, O.K. Kopabaeva, E.M. Abaideldinova, A.K. Abeldinova, A.K. Kotova, G.B. Ispayeva, J. Ginsburgs, N.V. Mironova, I.P. Blishchenko and others.

Modern problems of the environmental legislation of the Republic of Kazakhstan and foreign countries, as well as individual issues dedicated to international environmental and legal cooperation of the Republic, have been reflected and resolved in the scientific works of such famous Kazakhstani and foreign legal scholars, experts in the field of environmental, agricultural, natural resource law, such as: S. B. Baysalov, NB Mukhitdinov, A. Bekturganov, A.S. Stamkulov, D.L. Baideldinov, L.K. Erkinbaeva, S.D. Bekisheva, E.V. Novikova, S.Sh. Toleubekova, N.G. Lapteva, Yu.V. Gavrilova, R. Erezhepkyzy, G.B. Teleuov, D.N. Bekezhanov, D. Nurmukhankyzy and others.

It should be noted that certain aspects of international environmental and legal cooperation were studied in the works of such scientists as S.Sh. Tyuleubekov, N.G. Laptev, Yu.A. Gavrilov. In particular, in the work of S.Sh. Tyuleubekova investigated the fulfillment of obligations under certain international environmental conventions. The activity of the regional environmental center as a form of international environmental cooperation was studied in the works of N.G. Lapteva. The concept and stages of formation of international environmental law,

participation of the Republic of Kazakhstan in international environmental and legal cooperation are reflected in the monograph by Y. G. Gavrilova.

Unlike the above and other works, the dissertation research we propose has a number of fundamental differences.

It is aimed at determining the place and role of international treaty norms in the system of sources of environmental law, while the above studies solved other goals and objectives, in particular legal problems, forms and mechanisms of international environmental and legal cooperation of the Republic of Kazakhstan with other countries. The work reveals theoretical problems of sources of environmental law and issues of implementation of international treaty norms in environmental legislation, investigates the legal nature of an international treaty as a source of environmental law of the Republic of Kazakhstan, the content of universal, regional and bilateral international environmental treaties was studied, the legal nature of the declaration and resolution of international organizations in the field of environmental protection and the use of natural resources was studied, the state-legal mechanism for ensuring the implementation of international environmental obligations was studied, practical recommendations were given for improving the current legislation and activities state bodies of the Republic of Kazakhstan in the studied area.

**Methodological basis of the study.** The basis of the methodology of the dissertation research was the scientific works of famous Soviet, Russian, Western and Kazakhstani legal scholars, experts in the field of environmental, agricultural and natural resource law. The specificity and complex nature of the research topic also predetermined the need to study scientific papers and special legal literature on the theory and history of state and law, constitutional and administrative law of the Republic of Kazakhstan and foreign states, international (environmental) law, the law of international treaties and the theory of international law. Conducting a study of the considered problematic issues, the author was guided by such methods and cognitive techniques as: dialectical, formally logical, comparative legal, method of system analysis.

**The purpose and objectives of the research.** The aim of this work is a comprehensive study of the legal nature of international treaty norms in the general system of sources of environmental law of the Republic of Kazakhstan. A comprehensive study of these provisions, along with an analysis of the problematic issues of the correlation of national and international environmental law, made it possible to develop provisions and principles, in accordance with which it will be possible to eliminate the existing gaps in determining the status of international treaty norms in the hierarchy of sources of environmental law of the Republic of Kazakhstan.

**In order to achieve the aims of the research the following tasks were set:**

1) study the theoretical and practical aspects of the implementation of the norms of international environmental treaties into the current legislation of the Republic of Kazakhstan;

2) study the impact of the processes and results of international lawmaking in the field of environmental protection and the use of natural resources on the development of environmental law of the Republic of Kazakhstan;

3) to reveal the features of international sources of environmental law of the Republic of Kazakhstan, to investigate the legal nature of an international environmental treaty;

4) analyze the content of universal, regional and bilateral international environmental treaties of the Republic of Kazakhstan and identify their features;

5) study the content of resolutions and declarations of international organizations on environmental issues and substantiate their role and impact on the development of environmental legislation of the Republic of Kazakhstan.

6) study the state legal mechanism for ensuring the implementation of international environmental obligations and develop specific recommendations for improving the current legislation and the activities of state bodies of the Republic of Kazakhstan in the area under study.

**Object and subject of dissertation research** the object of the study is public relations in the field of determining the place and role of international treaty norms in the system of sources of environmental law of the Republic of Kazakhstan.

**Subject of dissertation research** are the legal mechanism for the recognition and determination of the place of international treaty norms in the system of sources of environmental law of the Republic of Kazakhstan.

**The empirical base of dissertation research** made international treaties of the Republic of Kazakhstan, decisions and resolutions of international organizations and bodies, national legislation of the Republic of Kazakhstan and some foreign countries on environmental protection and the use of natural resources.

**Scientific novelty of research** due to the fact that the thesis is a comprehensive monographic study of the problems of international legal sources of environmental law.

In the thesis on the basis of the study of national and international legislation, the contractual practice of the Republic of Kazakhstan on environmental protection and the use of natural resources, activities of international organizations on environmental issues, scientific works of legal scholars, experts in the field of national and international environmental law, a comprehensive study of the nature and content of international legal sources of environmental law of the Republic of Kazakhstan was carried out. Thus, the focus and necessity of this study are related to the lack of special works in the domestic legal science on international legal sources of environmental law of the Republic of Kazakhstan. In the framework of this study, for the first time in Kazakhstan, we analyze such provisions related to the problem of international legal sources of environmental law that relate to the ratio of national and international environmental law, the international treaty practice of the Republic on environmental issues.

A distinctive feature of this study from other scientific papers on the issues under consideration is that, that an attempt is made in it to scientifically and theoretically substantiate the recognition of special legal norms in the system of environmental law - international legal norms that together constitute the

international legal sources of environmental law of the Republic. In addition, taking into account the special legal nature of international legal norms and various approaches to the perception of such norms by the national legal system of states, the author was not limited to an analysis of the provisions already existing and studied in legal science, concerning the forms, mechanisms and principles of international environmental and legal cooperation of the Republic of Kazakhstan with other countries and the general characteristics of the main existing environmental agreements.

In this connection, an attempt was made in the environmental and legal science of sovereign Kazakhstan to conduct a comprehensive analysis of the international legal sources of environmental law of the Republic from the point of view of constitutional law (constitutional and legal perception of the norms of international law, determining the place of norms of international treaties in the general hierarchy of normative legal acts of the Republic), environmental law (filling in the gaps regarding the lack of research on the place of international legal acts in the general system of sources of environmental law), international law and its individual branches (the theory of the implementation of international legal norms in the national environmental legislation of the Republic, the ratio of international and national environmental law, analysis of the content of international environmental treaties from the standpoint of the law of international treaties, international environmental law).

#### **The main provisions presented for defence .**

1. Environmental law of the Republic of Kazakhstan was objectively influenced by the processes and results of international lawmaking in the field of environmental protection and the use of natural resources. Recognition in the Constitution of the Republic of Kazakhstan as an "effective law" of international treaty and other obligations of the Republic (part 1 of article 4 of the Constitution), as well as the prevalence of the norms ratified by Kazakhstan of international treaties in relation to the norms of national laws (part 3, article 4 of the Constitution) directly implies the allocation of special international legal sources in the general system of sources of environmental law. The constitutional and legal recognition and acceptance of the norms of international environmental conventions and treaties of the Republic of Kazakhstan contribute to the process of transformation of international environmental treaty norms into the current national environmental legislation.

2. The national system of legal support for the implementation of international environmental law is the legal basis for the implementation of international legal regulations at the national level and includes, firstly, general regulatory legal acts on the relationship between international and national law of the Republic of Kazakhstan, on the procedure for the conclusion, execution and denunciation of international treaties, on the implementation of law-making activities, the competence of state bodies in the field of implementation and, secondly, national legal acts adopted in order to ensure the implementation of international environmental obligations under specific international treaties (implementing legal acts). The effectiveness of the national mechanism for the implementation of the

state ensures the effectiveness of its legal system, contributes to the formation and development of international sources of national law, including the environmental law of the Republic of Kazakhstan.

3. International legal sources are an integral part of the sources of environmental law of the Republic of Kazakhstan, they are represented by special international treaty and declarative acts that act independently or simultaneously with the current norms of national environmental legislation. The need to identify international legal sources in the general system of sources of environmental law is due to the direct “intrusion” of international legal norms into the current environmental legislation of the Republic.

4. The international environmental treaty is the main international source of environmental law, and is an international agreement, concluded by the Republic of Kazakhstan with a foreign state (or states) or with an international organization on environmental protection and the use of natural resources in writing and regulated by special regulatory legal acts of the Republic of Kazakhstan and international legislation, regardless of whether such an agreement is contained in one document, in two or more related documents, and also regardless of its specific name. Mandatory ratification of an international environmental treaty will allow avoiding multi-level environmental agreements, giving them equal status, and will contribute to the effective implementation of international environmental obligations of the Republic of Kazakhstan.

5. International declarations and resolutions adopted within the framework of specialized international intergovernmental organizations and international bodies, and devoted to general or specific environmental issues, cannot directly relate to the sources of environmental law of the Republic of Kazakhstan, since they are devoid of the quality of legal binding and are optional (recommendatory) documents. At the same time, given the importance and significance of many declarative documents on environmental problems, as well as the practice of states related to the observance of these documents and their consideration in the development and improvement of national environmental legislation, such acts can be considered as indirect (auxiliary) international legal sources. environmental law of the Republic of Kazakhstan.

6. The state legal mechanism for the implementation of international environmental obligations is an integral part of state regulation in the field of environmental protection and the use of natural resources, a set of legal norms, existing institutions that ensure the due fulfillment of states voluntarily assumed obligations at the national level. The incompletely legalized recognition at the level of the current law of Kazakhstan of international treaty norms directly affects the effectiveness of international environmental and legal cooperation and the proper implementation of international environmental obligations in this area at the domestic level. The norms of international environmental law are not fully ensured at the national legal level, not always existing national regulatory legal acts are timely adapted and brought in line with the country's new international obligations. Along with this, the state mechanisms for monitoring the fulfillment by the state of obligations arising from international environmental treaties are not fully developed,

there is no clear interaction in these issues between the foreign policy, environmental protection and other departments of the country. This situation complicates the implementation of the country's international treaty obligations at all levels.

**The theoretical significance of the dissertation** consists in the fact that it will contribute to a better understanding: of the legal nature and special role of international legal norms in the general system of sources of environmental law of the Republic of Kazakhstan; questions of constitutional perception of the norms of international environmental treaties that have not been previously studied in the science of environmental law and issues of the correlation of international environmental law and environmental law of the Republic of Kazakhstan. Both the study itself and the results obtained will contribute to the further development of the science of environmental law in the Republic of Kazakhstan.

**Practical value of the research work** lies in the possibility of applying the results of the study in the further scientific development of individual problems of environmental law of the Republic of Kazakhstan, its sources. In addition to this provision, dissertations can be applied in the process of teaching the courses "Environmental Law of the Republic of Kazakhstan", "International Law" for students of higher educational institutions of the Republic, students in the specialties "Jurisprudence" and "International Law", as well as in the preparation of scientific developments and scientific manuals.

**Approbation of the research results.**

Scientific proposals, conclusions and provisions on the results of scientific work have been tested and published in international, republican scientific and practical collections of conferences, as well as in journals recommended by the Committee for Monitoring in the field of education and science.

As a result of research activities published 11 scientific articles. Of these, 3 articles are published in scientific publications recommended by the oversight committee Education and Science of the Ministry of Education and Science of the Republic of Kazakhstan, 2 articles in magazines «Journal of Environmental Management and Tourism» and «Environmental Policy and Law», included in the Scopus database, 6 articles in materials of international scientific and practical conferences.

**Structure and scope of the dissertation.** The research work consists of three chapters, nine paragraphs, conclusion, list of sources used.