

The Legal Status of "Technical" Documentation, its Place in the System of Subsoil Legislation, and Problems of its Application

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1. General Approach

The main theme of the Fifth Atyrau Conference of KPLA is connected with the legal status and legal issues of "technical" documentation in subsoil use. Lawyers who work in this sphere are, on the whole, familiar with this theme or some of its aspects. At the same time, this is a sphere which seldom was the subject of special legal analysis and professional discussions.

The choice of the conference's theme seems to me as very timely because in the view of the forthcoming Kazakhstan's entry to the World Trade Organization the state agencies need to perform the work on bringing the national legislation in line with international standards in the area of technical regulation (which, in its turn, necessitate the establishment of relevant rules and requirements affecting subsoil users).

Regarding the problems of technical documentation,¹ there two basic aspects of their analysis may be tentatively identified - theoretical and action-oriented.

- 1) Theoretical aspect of the analysis includes such issues as the concept of technical standards, legal regime of technical regulations, issues of technical regulation on the whole, etc.
- 2) Action-oriented aspect of the analysis covers, in particular, the composition, classification, procedure for development of technical documentation and its agreeing, issues of responsibility for violations in

¹For the purpose of this paper, the term "technical" documentation generally includes various technical and technological documentation, technical regulations, and also technical standards.

connection with technical documentation, and many other issues encountered in practice.

Below I would dwell on some of the issues, both of theoretical and action-oriented nature.

2. Theoretical Aspects of Technical Documentation

When talking about theoretical aspects of technical documentation, it should be kept in mind that technical standards (and accordingly, documents) were practically always considered outside the legal regulation system. However, recently many Russian and Kazakhstan lawyers come to conclusion that "...time has come to drastically change the view of technical regulation and rules inherent to it"².

A first serious step of Kazakhstan in this direction was adoption in November 2004 of the Law on Technical Regulation³, which defined technical regulation as legal and regulatory⁴.

Such legislative decision has not been unanimously approved by lawyers. At the beginning of 2006 at a big international conference in Astana the problems of improvement of legislation in the area of technical regulation, specifically, categories of "technical regulation" (in essence, "technical law") subject to the provisions and requirements to member-states of the WTO, were discussed⁵.

Judging by the reports of this conference, the opinions on the subject of discussion were diametric. For example, one part of lawyers was for attaching of a status of a regulatory legal act to technical regulation, while other participants expressed strong dissent to it⁶. Nevertheless, in December 2006 the RK Law on the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Matters of "Technical Regulation"⁷ introduced to the RK Law On Regulatory Legal Acts⁸ (hereinafter – the Law on RLA) a rule on technical regulation under which it is

² Please see: Yu. Tikhomirov. Technical and legal standards in the system of law. – Law and Economy, No. 10, 2004. Please also see: L. Zhanuzakova. Legislation on technical regulations and problems of its improvement – Entrepreneur and Law, No. 3, 2006, pp. 9-13.

³ Law of the Republic of Kazakhstan on Technical Regulation was adopted on 9 November 2004, published on 13 November 2004 and introduced into effect in 6 months after the publication, that is, from 14 May 2005 subject to transition provisions (hereinafter – Technical Regulation Law).

⁴ The following definition of technical regulation is provided: "technical regulation shall mean legal and regulatory control of relations connected with the determination, establishment, application, and implementation of mandatory and voluntary requirements to products, services, processes, including the activity on the confirmation of conformity, accreditation, and state control and supervision over compliance with the established requirements, except for sanitary and phytosanitary measures" (paragraph 46 of Article 1). It is established that "the requirements as established by regulatory legal acts in the area of technical regulation shall be obligatory, shall be of direct effect in the entire territory of the Republic of Kazakhstan and may be amended by the insertion of amendments and/or additions to the relevant regulatory legal acts in the area of technical regulation" (paragraph 2 of Article 17).

⁵ L. Zhanuzakova. The indicated publication.

⁶ Ibidem.

⁷ The RK Law on the Introduction of Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on Matters of Technical Regulation was adopted on 29 December 2006.

⁸ RK Law No. 213-1 on Regulatory Legal Acts, dated 24 March 1998.

referred to a derivative type of regulatory legal acts⁹. The same Law, in the context of technical regulation, amended the Subsoil Law¹⁰, the Petroleum Law¹¹ and some other laws (in total 30 laws).

Reviewing the issues of technical regulation, it is logical to begin the analysis from technical rules as a cell of law. As already noted, the common position until the recent time consisted in the exclusion of technical rules from amongst social rules, and, accordingly, from the subject of the analysis of legal scholars¹².

At the same time, the legal scholars believe that "technical rules, just as the sphere of their application, cannot exist in isolation, out of social rules and spheres of their direct application. All the rules are interrelated, they interact, permanently affect each other. The technical rules indirectly influence on the entire society and also on the relations arising between the people and groups and associations formed by them. In this context these rules havenot only technical but also social nature. However, the sociality of the technical rules is rather relative as compared with the social rules, it is limited and is displayed both in special regulatory legal acts, which state the contents of various technical rules (for example, related to occupational health and safety) and in acts which are of a reference nature, that is, contains references to technical rules. Ranking of social and technical rules was not always clearly and consistently made in the national and foreign legal literature, especially at the turn of XIX and XX centuries".¹³

Of interest is the position of A. F. Cherdantsev who believes that *"from the viewpoint of the contents, the rules may be different – of political, economic, organizational and suchlike nature. Such division characterizes the contents of rules but not their legal features. The technical-and-legal rules, rules of technical content shall be identified in this row. In form, these are legal rules, in contents these are technical rules (sanitary, veterinary, safety rules, state standards, technical specifications and so on), which violation entails various legal implications (responsibility, compensation of damage)".¹⁴*

Yu. Tikhomirov in the cited paper not only analyzed the nature of technical rules and evaluated their significance in the context of modern conditions, but also made a number of specific proposals regarding the ordering of technical regulation. In

⁹ According to the Law on RLA "regulatory legal acts of derivative types shall be adopted or approved by regulatory legal acts of the main types and shall form with them the unified whole. The place of a regulatory legal act of derivative type in the hierarchy of regulatory legal acts shall be determined by the level of an act of the main type" (paragraph 4 of Article 3).

¹⁰ The Law on the Subsoil and Subsoil Use. It was adopted by the Edict of the President of the Republic of Kazakhstan having the force of Law, dated 27 January 1996, as amended (hereinafter – the Subsoil Law).

¹¹ The RK Law on Petroleum, dated 28 June 1995, as amended (hereinafter – the Petroleum Law).

¹² See for example: 1. 4. Strykh. Theory of state and law. Manual for higher educational establishments. Moscow, "Yustitsinform", 2006, p. 683, scheme No. 5 "Rules of the modern society". N. M. Marchenko believes that "technical rules are not legal rules, therefore, they cannot express the state will". Problems of the theory of state and law. Manual. Moscow, 2005, p. 613.

¹³ M. N. Marchenko. The indicated manual, p. 628.

¹⁴ A. F. Cherdantsev. The theory of the state and law. Manual for higher educational establishments. Moscow, "Yuright", 2002. p. 213.

particular, he notes that "The rules are distinguished by their contents. One of them – technological – are addressed to a specific person in the framework of his functions, other – industrial and construction – are addressed to both obligated entity and to his partners, the third establish quantitative indicators of operations – quotas, volumes, items, reporting, etc., while the fourth contain standards (orienting points and limits) of actions"¹⁵, and so on.

In reviewing the issue of technical rules and their status, the possibilities of blanket rules of law and also provisions of the theory of law on the structure of rules should be kept in mind¹⁶. I believe that being based on the relevant initial provisions it may be possible to classify the contents of technical rules as disposition of regulatory rules or as hypothesis of conservation rules.

In this respect, there is no need to set forth the contents of technical rules directly in the texts of laws or subordinate acts (furthermore, the phrasing of technical rules is not the competence of lawyers, but of the other experts – environmentalists, builders, etc.¹⁷). However, technical rules (normatives, standards, etc.) shall obligatory be considered as an important term for the evaluation of lawfulness of conduct of the obligated person and as a term for making him responsible in the case of incompliance with technical prescriptions. Thus, it appears that the technical rules may and should fit well into the legislative system, including into the subsoil legislation. There are no doubts in the need to conduct theoretical research with respect to technical rules and technical documentation subject to the current circumstances and international practice.

3. Technical Documentation in the System of Subsoil Legislation

As is known, a quite developed system of market legislation, which considerable segment is taken by the legislation on subsoil and on petroleum, is formed in Kazakhstan. Considering the significance of subsoil use for the Republic, the review of this legislation is in the focus of many Kazakhstan lawyers. Practically, the issues of technical documentation, however, have been outside their attention up to the present time.

Meanwhile, the technical documentation is of great importance for the proper performance of subsoil use, and technical rules, in one way or other, appear in the subsoil legislation system. For example, the Subsoil Law, the Petroleum Law, and also

¹⁵ See: Yu. Ikhomirov. Technical and legal rules in the legal system. – Law and economy, No. 10, 2004.

¹⁶ M. N. Marchenko, characterizing the blanket rules notes that "The blanket rules differ from other legal rules in that they establish the rules of conduct only in the most general form, not specifying them. As to the specification of these rules, it is contained in special regulatory legal acts, existing separately from the blanket rules. They are referenced in the considered rules. Rules stipulating legal responsibility for violation of safety regulations, traffic regulations, various GOSTs may serve as examples of blanket rules. They just state that a certain type of responsibility would arise for violation of those rules and GOSTs, while the rules themselves are stated in special acts". The indicated manual, p. 625.

¹⁷ According to the Law on Technical Regulation, "The regulatory legal acts are adopted in the area of technical regulation under the following directions: 1) industrial safety; 2) safety of operation of buildings, constructions, structures and adjacent territory; 3) fire safety; 4) biological safety; 5) electromagnetic compatibility; 6) ecological safety; 7) nuclear and radiation safety; 8) chemical safety; 9) electrical safety; 10) information safety; 11) toxicologic safety; 12) unity of measurements; 13) safety of food products; 14) safety of infant's food; 15) mechanical safety" (paragraph 2 of Article 17).

the Ecological Code¹⁸ contain technical rules and considerable number of blanket rules, which contain references to technical regulations and to other technical acts.

It is also known that there are more subordinate regulatory legal acts in the subsoil use than the laws, and specific weight of technical rules in some of them is rather substantial (for example, in such key acts for subsoil use as the Unified Rules for Development of Oil and Gas Fields of the Republic of Kazakhstan¹⁹ (hereinafter – the URD) and the Unified Rules for Subsoil Protection in the Development of Fields of Minerals in the Republic of Kazakhstan²⁰ (hereinafter – the URSP). A multitude of other technical acts obligatory for implementation are in effect in Kazakhstan: standards, Sanitary Rules and Standards, Construction Rules and Standards, pharmacological papers, ecological, firefighting, veterinary, energy, transport rules²¹.

If an investor or a student of law department wants to form a notion of the subsoil use in Kazakhstan, including with respect to petroleum, and reviews our basic laws in this part – the Subsoil Law and Petroleum Law – they, I think, would know quite a lot about a competition of investment programs and on the Kazakhstan content in the performance of subsoil use. However, they would get scarce information about the required actions and the procedure for their performance after a contract is executed, even if they review many other laws.

For example, it is a common knowledge how significant is a project of the field development, but the Laws are practically silent on it and also on many other working documents of the subsoil user.

Of course, it would be logical to refer the investor and the student to subordinate acts, and, first of all, to the URD and the URSP, which review could provide better understanding of how on a stagewise basis the subsoil use is carried out after execution of a contract. These rules contain important information on the preparation of a field to the development (including tests of exploration drilling wells, well testing, estimation of reserves), and on the project of oil fields development, and on their commercial development.

However, their analysis has revealed the following:

- 1) Incompliance of the URD and the URSP with the Subsoil Law and the Petroleum Law, including in part of definition of one and the same concepts – for example, such basic concept as exploration.
- 2) In part of legal aspect, the rules are out of date – from the moment of their adoption they had not been amended, and they contain such archaisms as, for example, licenses for the subsoil use as a necessary condition for the preparation of a field to development.

¹⁸ The Ecological Code of the RK, dated 9 January 2007.

¹⁹ Approved by Decree No. 745 of the Government of the Republic of Kazakhstan, dated 18 June 1996.

²⁰ Approved by Decree No. 1019 of the Government of the Republic of Kazakhstan, dated 21 July 1999.

²¹ For reference, we would like to note that the Law on Technical Regulation not only revoked the RK Law on Standardization and the RK Law on Certification (Article 47), but on the whole amended (subject to transitory provisions) the legal regime of standards.

- 3) Both the URD and the URSP are quite bulky documents - about 50 pages each. However, their big sections coincide with each other – for example, sections on oil and gas fields are practically fully replicated. It is inconvenient and time consuming to review them – such review takes too much time, and in this respect their excessive volumes accompanied with considerable replication just is another ground for errors.
- 4) Even after careful review of the Rules there is no required clarity regarding many important issues. For example, the Rules say that “exploration shall be carried out under a specially approved project” (paragraph 1.2.4), but do not specify who, when, and within what deadlines approves this project of exploration. The same is true with respect to a project of well construction, and to many other issues.

It is not always possible to find the relevant regulations, even at the level of ministerial acts, and deciding on the issue of the required actions a subsoil user may rely just on business practice. However, the most significant rights and obligations of the parties, on which the implementation of contractual terms depend on the whole, must be clearly and intelligibly legislated on the level of legislative acts.

This is a big and complicated work not for one day and even not for one year. In this respect, the process of improvement of technical regulation in the oil and gas sector should be inseparable from the improvement of the legal regulation on the whole. With regard to this, acts of various levels should be reviewed and separated for the purpose of:

- 1) fixing on the legislative level the rules of law which quite fully reflect the process of subsoil use on all its stages up to the termination of a contract;
- 2) separation of technical rules, containing a list of requirements of the state to certain type of activities in connection with subsoil use, to technical regulations and, probably, to other technical documents

This, specifically, would need the transfer of certain regulations from subordinate acts (including from the URD and the URSP), having preliminarily worked on them subject to the provisions of the current legislation, to the level of the Subsoil Law and Petroleum Law.

As far as is known from publications, technical regulation in the oil and gas sector of Kazakhstan is contemplated to be improved in several steps. Specifically, K. Kaipiev, President of Main Dispatcher Control of Oil and Gas Industry JSC and K. Karibayev, the chief expert of the Committee for Technical Regulation and Metrology of the RK Ministry of Industry and Trade say that the RK Ministry of Energy and Mineral Resources (MEMR) actively works on the improvement of regulatory base of the oil and gas sector. Additionally, it is communicated that for the transition to a new

system of technical regulation in the oil and gas sector there are planned and currently held various events²².

That is, the work on bringing into conformity the oil and gas legislation and technical regulation is entrusted to the MEMR and its subdivisions. Lawyers, including lawyers of KPLA, must obligatorily participate in this work.

²² K. Kaipiev, K. Karibayev. Technical regulation in the oil and gas sector of Kazakhstan. – Oil, Gas and Law of Kazakhstan, No. 2 and No. 3, 2006.

Legal Responsibility in the Sphere of Subsoil Use

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Under contemporary conditions of intensive development of oil and gas sector of economy the task of ensuring rational and complex use of subsoil becomes more and more urgent. One of basic means capable of enhancing the effectiveness of subsoil use is legal responsibility.

The specifics of the legal responsibility in the subsoil use area is that the Republic of Kazakhstan Law "On Subsoil and Subsoil Use", the major document regulating these issues, does not contain provisions stipulating specific types of offence and measures of responsibility for them. This aspect may be considered as a significant gap in the legislation in this field. The Republic of Kazakhstan Code, whose adoption is needed instead of the effective Law, should have a separate chapter addressing the issues of legal responsibility.

The formerly effective Republic of Kazakhstan Code on subsoil and processing of minerals envisaged such types of responsibility as criminal, administrative, civil, disciplinary and material responsibility. The Law now in force has a reference article according to which those guilty in violation of the Republic of Kazakhstan legislation on subsoil and subsoil use shall bear responsibility in conformity with the Republic of Kazakhstan laws, i.e. the issues of imposing responsibility for breach of the law on subsoil shall be regulated by a special legislation.

Civil responsibility is one of responsibility types that is capable of exerting most influence on the effectiveness of using subsoil under contemporary conditions.

This type of responsibility mainly represents itself in the form of compensating damages and paying penalty.

Speaking about civil responsibility, it should be noted that in literature this notion is sometimes

mixed up with that of material responsibility considering that in both cases the matter concerns compensation of a material damage inflicted. However, it is a wrong conclusion as civil responsibility is based on provisions of civil law, while material responsibility proceeds from provisions of labor law.

Under contemporary conditions the importance and significance of material responsibility as a means for ensuring rational and comprehensive subsoil use is undeservedly underestimated. Under market conditions material responsibility of factory and office workers, as well as the material responsibility may prove more effective than other types of legal responsibility.

Disciplinary responsibility of factory and office workers only appears when an employee commits a disciplinary misdemeanor and it has exclusively individual nature.

Disciplinary responsibility in the area of subsoil use presupposes commitment of a disciplinary offence in the sphere of relations on subsoil use and protection. Non-execution or improper execution of employees' labor functions and duties on rational and comprehensive subsoil use and protection should be recognized as a disciplinary offence.

In the issues of disciplinary responsibility no problem issues appeared, except the cases where job descriptions did not directly set out the duties of a person on protection and rational use of subsoil or were absent. Under such situation in practice the responsibility lies on the immediate leaders of company units who are in charge of subsoil use issues.

As an example, the following facts can be cited.

The Atyrau Oblast Prosecutor's Office in accordance with the plan of work for the second quarter of 2006 conducted an audit of compliance with the legislation on protection and rational use of subsoil in the oil and gas producing companies of the region.

Thus, an audit in PF "Embamunaigaz" revealed that the company had 5 contracts for exploration and production of hydrocarbons in 40 fields.

It was noticed that contractual financial obligations as regards construction, acquisition of fixed assets, non-material assets, as regards search for exploration drilling, geophysical work and deductions to the social sphere, and as regards expenses into the social sphere etc. were not fulfilled in full volume.

The items of the injunction on the findings of an audit by an authorized agency in the sphere of protection and rational use of subsoil are not fully met by TU "Zapkaznedra".

It was also established that in breach of Article 30-5 of the ROK Law "On Oil" the company in 2005 flared associated gas in the volume of 73,957 mln cubic meters without due authorization, a damage in the amount of 231,360,276 tenge

was collected against the claims by the territorial department for environmental protection.

Alongside with hydrocarbon production PF "Embamunaigaz" pursuant to contracts on conducting work on combined exploration and production of clay materials also produces common minerals (hereinafter CM) at 17 deposits.

In doing so they do not comply with terms and conditions of the contracts as regards development of EIA during exploration and production of minerals, in 2005 development of CM fields was done without an agreed technical design of the development and annual plan for development of mining work, nor did they pay royalties (subsoil use tax) from the clay materials production.

Production of underground water to meet household and domestic needs from wells in "Tortkuduk", "Kenbai" (S.Kotyrtas) and other "Kenbai" fields was done without a due permit for special water use.

Besides, other violations of unified rules for subsoil protection were revealed, in particular, absence of protocols of approving underground water reserves, approved technical design for developing underground water deposits with an opinion of the state ecological experts commission, mining allotment act, commission report on acceptance of waterworks facility, approved regime of underground water operation, sanitary protection measures plan.

For the committed violations on the basis of the Oblast Prosecutor's Office's proposal 10 people were brought to disciplinary responsibility, including the chief engineer and unit heads of all 5 oil and gas producing departments of PF "Embamunaigaz".

Similar breaches were also revealed in other business entities.

Altogether, pursuant to acts of prosecutor's response based on the findings of auditing measures 27 people were brought to disciplinary responsibility.

Administrative responsibility is to play an important role in ensuring effectiveness of subsoil use. Commonly accepted opinion is that administrative responsibility emerges for commission of administrative offence, i.e. unlawful guilty (intentional or unintentional) act (action or inaction) encroaching on state, public system, property, life or health of citizens.

Administrative responsibility in the field of nature use is to stop actions inflicting damage on nature when they start, i.e. at that stage where a wrong act did not yet grow into a penal action and did not inflict on society (nature) a damage that requires more tough measures of response.

The Republic of Kazakhstan Code on Administrative Offences dated 30 January 2001 (hereinafter ROKCAO) defined 17 administrative offences in the subsoil use and protection.

In particular it mentions conducting work on geological study of subsoil without concluding a contract; violation of the right to geological study of subsoil; violation

of the rules to place wastes of production and consumption, discharge of waste water; violation of the rules for developing designs of organizations on production and processing of minerals; violation of environmental rules and standards for developing subsoil and processing of minerals; violation of the rules for rational and comprehensive use of minerals etc.

Consideration of all 17 articles is in the competence of an authorized agency in the sphere of subsoil protection and rational use.

Many of the above-mentioned constituent elements of offences as applied to Atyrau Region are inactive, except Art. 275 of the ROKCAO as regards non-fulfillment of a subsoil use contract terms and conditions.

For example, in 2006, based on findings of the above-said audit "SANAKO" LLP and "Arna-oil" LLP were brought to administrative responsibility pursuant to Art. 275 of ROKCAO and fined 123,600 tenge each

There is one more article in the Code associated with subsoil use and applied in practice, i.e. Article 122 of ROKCAO that should be reviewed within the competence of the said body, and that envisages responsibility for violation of the right to subsoil property.

In 2006, 3 administrative actions were initiated pursuant to this article by the Environmental Prosecutor's Office.

E.g., for illegal production of common minerals employees of ANU ZF "Kaztransoil" A.Khisamedenov, A.Koishibayev and K.Umbetov were brought to administrative responsibility under Article 122 of ROKCAO and fined 20,600 tenge each.

There is no judicial practice on the above-said articles since there were no appeals against government agency decisions.

Criminal responsibility is of great importance for ensuring rational and comprehensive subsoil use by national and foreign investors.

Criminal responsibility was always associated with state coercion (it presupposes appearance of protective legal relation in which one party – a criminal – is obligated to obey to requirements of another party – the state – in the person of its agencies); moreover, criminal responsibility is characterized by certain deprivations that the guilty party must suffer (deprivation of certain welfare – an objective property of responsibility, the state's reaction to damage inflicted by the criminal).

In view of the above, one may recognize that the role of criminal responsibility in securing rational and comprehensive subsoil use is somewhat limited, but nonetheless, it may prove quite effective in solution of a number of specific tasks. However, we do not know yet a single case of bringing not only foreign investors but also our citizens to criminal responsibility for breach of the legislation on subsoil and subsoil use.

The Republic of Kazakhstan Criminal Code dated 16 July 1997 (hereinafter ROKCC) contains two articles especially dedicated to violations in the field of subsoil use and

protection: Art. 245 (violation of safety rules in conducting mining or construction work) and Art. 286 (violation of subsoil protection and use rules).

However, from the moment of adoption of a new Criminal Code in 1997, these articles as applied to our field are inactive.

There are articles on other environmental crimes on which prosecutors brought criminal actions but in their process and investigation emerged problem issues of law-enforcement nature.

Altogether, during the period from 2003 till 2007, in Atyrau Region 6 criminal cases were initiated on violations of rules for natural resources protection and use. It is worth noting that all criminal cases were initiated as a result of prosecutors' audits.

From the state number of criminal cases 3 were sent to court, 2 criminal cases were dismissed in the procedure, and 1 criminal case is presently at the stage of investigation.

So, in 2004, the Atyrau Environmental Prosecutor's Office with participation of related state regulatory agencies conducted audit on the fact of environmental pollution, during which a number of violations of environmental legislation were revealed.

As a result of an accident at well #209 of Nurzhanov field in Atyrau Region Zhylyoi District a significant pollution of land resources took place (the damage amounted to 181,487 tenge).

On the said fact the Prosecutor's Office initiated a criminal case pursuant to Article 277 of ROKCC "Violation of Environmental Requirements to Business and Other Activities), Article 282 of ROKCC "Pollution of Atmosphere" and Article 285 "Land Spoilage".

Besides, on "Embamunaigaz" OJSC on whose fault the accident occurred an administrative penalty was imposed in the form of a fine.

By the ruling of the Zhylyoi District court dated 20.05.2004 re A.Tankayev, "Embamunaigaz" OJSC drill-operator, the proceedings were terminated based on reconciliation of parties in accordance with Art. 67 2 of ROKCC.

Similarly, on 12 April 2004, the Atyrau Environmental Prosecutor initiated a criminal case based on the findings of an audit in Mynteke Yuzhny in Atyrau Oblast Isatai District pursuant to Articles 277, 282.1, 285.1 of ROKCC.

It was established during the inspection that an open emission of hazardous substances occurred on well #3 of Mynteke Yuzhny field as a result of violation of conducting work during well construction. The inflicted damage to subsoil made up 566, 285 tenge and to atmospheric environment – 57,942 tenge.

With regard to drill-operator A.V.Yudin, the Isatai District Court by its ruling dated 04 August 2004 terminated the proceedings based on reconciliation of parties in accordance with Art. 68 of ROKCC.

An analysis of the activities of Atyrau Oblast law-enforcement agencies and judicial investigation practice on cases of crimes associated with environmental violations testifies to the necessity of their research and discussion in order to further improve the legislation.

For example, disposition of Article 282 of ROKCC "Pollution of Atmosphere" stipulates responsibility for violation of the rules for emission into the atmosphere of pollutants or breach of the regulations for operation of installations, constructions and other facilities, if such acts entailed pollution or another change of natural properties of the air.

A violation of the rules for emission into the atmosphere of pollutants is understood as their discharge in excess of maximum permissible standards (PDV). A literal interpretation of the law allows bringing to criminal responsibility any person (e.g., a car driver) for the very fact of polluting the air in excess of the established standards. Under such a construction there is no differentiation between an administrative misdemeanor and a crime. It should not go about pollution of atmosphere, which in principle corresponds to the title of the article, but about a specific illegal emission of pollutants into the ambient air.

For instance, on 17 October 2005, the Atyrau Oblast Environmental Prosecutor's Office initiated a criminal action on the fact of an emergency emission of gas at the Tengizchevroil LLP gas processing plant on the basis of Articles 277 and 282.2 of ROKCC providing for responsibility for violation of environmental requirements in using natural resources that entailed significant pollution of environment and the atmosphere.

This criminal case was dismissed for lack of components of crime in the actions of suspects, as fundamental causes of the emergency emission of pollutants into the atmosphere were unsatisfactorily developed mechanisms of distribution device. The emergency emission was caused by an unforeseen turning off of the section switch.

Moreover, as a general rule, responsibility for pollution of the ambient air appears in the event of excessive PDV (maximum permissible emission) in it. However, the investigation practice showed that it is not possible on criminal cases of this category to determine who exactly exceeded PDV, it is impossible to find a specific culprit.

It was established by the example of the above-stated criminal case that it is not legally possible to determine a person guilty of the ambient air pollution since the ambient air pollution occurred as a result of an accident at the plant. However, it is possible to identify persons who are charged with ensuring environmental safety.

As to the solution of this problem it is expedient to impose criminal responsibility under the said article on persons who exercise managerial functions. It is also possible to consider the solution of the issue of criminal responsibility as it is practiced in a number of foreign states, including the USA, but for this end the system of the Republic of Kazakhstan criminal law should be changed, which is quite difficult.

One faces a similar problem when applying in practice Art. 281 of ROKCC that provides for responsibility for water pollution. In a big mass of water a pollution spot quickly dissolves, and it becomes difficult to find it.

Besides, it does not seem possible to calculate damage inflicted on aquatic environment on all facts of polluting Caspian Sea and the aquatic environment of the Ural River for lack of scientifically grounded methods for calculations of damage inflicted on the aquatic environment as a result of overflow of products and wastes hazardous for environment.

Nor does the absence of such methods allow bringing to criminal responsibility those guilty under Article 283 of ROKCC "Pollution of Marine Environment" as this Article by its construction is a material one, and to bring the culprits to criminal responsibility certain consequences should ensue.

As for environmental components of crime, the Criminal Code has many defects and shortcomings, which makes difficult their application in practice.

Under such circumstances, as a solution of the problem it is necessary to expand the list of environmental components of crime or change and supplement dispositions of available components, including those in the subsoil use sphere.

For example, criminal responsibility should be introduced for low-quality sealing of oil producing wells, including those located in the flooding zone.

This is a pressing issue for our region considering the large-scale development of the Caspian Sea shelf.

Article 286 of ROKCC may be supplemented with a separate part addressing violation of rules of subsoil protection and use during designing, placing, constructing, commissioning and operating oil and gas producing companies or underground installations associated with oil and gas products extraction.

Criminal responsibility may also be envisaged for commission of the following acts: unauthorized seizure of subsoil; breach of the state property right to subsoil; above-plan losses of minerals; above-plan dilution of minerals.

Violations of the environmental legislation as regards subsoil use and protection constitute the most topical issue in the activities of the Atyrau Region Prosecutor's Offices due to the geographical nature of the region. In view of this, the attention of the Prosecutor's Offices in the region, in general, and the Specialized Prosecutor, in particular, is focused on intensification of their activities in this direction.

On the whole, analyzing the current legislation, one may come to a conclusion about a relative loyalty of criminal responsibility in the sphere of subsoil use. First of all, it is connected with the fact that now the criminal law is developing toward humanization of punishment, however, one should not underestimate the role of criminal responsibility in increasing effectiveness of the law on subsoil and subsoil use.

So, in spite of lack of provisions addressing legal responsibility of subsoil users in the laws on subsoil and subsoil use, the special legislation directly provides for grounds and procedure of imposing criminal and administrative responsibility for breach of subsoil use rules.

At the same time, many aspects of subsoil users' responsibility were not duly legislatively fixed. Therefore, I think that at present it is critical to pass a new codified regulatory act, namely the Republic of Kazakhstan Code on Subsoil and Subsoil Use that would promote ensuring rational and comprehensive use and protection of subsoil.
