

Civil Law Regulation of the Right to Life and Right to Health in the Field of Chemical Safety of the Republic of Kazakhstan

*Erkairatkyzy Dautbayeva-Mukhtarova,
Aliya Otarbayevna Askarova and Saule Zhusupbekovna Suleymenova*

Kazakh Humanitarian Law University, Astana city, Republic of Kazakhstan
Al-Farabi Kazakh National University, Almaty city, Republic of Kazakhstan

Abstract: This paper is to study the civil regulation of private non-property rights in the field of chemical safety as one of the most problem sectors of technological security due to increasing number of technogeneous disasters. The author provides a gradual transition from the study of the essence of private non-property relations in the civil law of the Republic of Kazakhstan to the rights to human life and health, their civil protection, features of its implementation in conditions of the chemical threats. Author presents the chemical safety as the systems consisting of numerous different-level elements with multiple connections and considers it as an integral part of national security. In this regard, the author assumes the necessity of the special methods to protect the private non-property rights to life and health and derived property rights. The author demonstrates the conceptual approach to study and indicates the need for the development and adoption of the Concept of chemical safety by showing that the right to life and health in the field of chemical safety are ensured by a complex legal, organizational, financial, material and information measures stipulated to prevent and eliminate the real and potential security threats and mitigation of their consequences.

Key words: Life • Health • Personal non-property rights and benefits • Right to life • Right to health • Civil law • Civil law regulation • Civil-law responsibility • Chemical safety

INTRODUCTION

World community, highly developed countries and peoples considers the rights and freedoms of person and their protection to be the basis of the state and society. When considering them, we come to a conclusion that such basic personal non-property rights as right to life and right to health of person require special attention.

The Republic of Kazakhstan declared the human rights to be priority and the most significant values of society. It recognized the necessity to follow up generally accepted international standards adopted by the General Assembly of the UN on December 10, 1948, Declaration of Human Rights dated December 16, 1966 and two International covenants on human rights.

The Constitution of the Republic of Kazakhstan dated August 30, 1995, became the basis for entire current law defining the legal status of person. The article 1 thereof declared the Republic of Kazakhstan democratic, secular,

legal and social state the highest values of which are person, his/her life, rights and freedoms [1].

Personal non-property benefits and rights represent the complex law institution including the standards of not only constitutional law but such other branches of law as criminal, civil, family and environment law and etc.

The Constitution of the Republic of Kazakhstan puts to the first place the right to life and right to health among personal non-property benefits by recognizing them as the absolute values of not only separate individual, but for the society altogether.

It is not enough to recognize the right to life and right to health. It is necessary to guarantee the possibility of their full value implementation from the point of view of law. The law system and law order at which a person would have the possibility to implement the rights and freedoms without obstacles need to be established. Insufficient development of the law mechanisms of implementation of the right to life and health in the field of

chemical safety stipulates for high topicality of the study and defined problems in the Republic of Kazakhstan [2].

We consider the chemical safety as multi aspect category which reflects the status of protection of essential interests of an individual, society and state, regime providing for responsiveness and independence of these interests in relation to the available threats and influences.

The efficient system of chemical safety has not been still formed in the period of market transformations in the Republic of Kazakhstan. As a result, the measures to provide chemical safety are chaotic and isolated from each other and are often not fully financed. The concept of chemical safety wasn't duly studied in the scientific literature; therefore, the above mentioned problems acquire special topicality and severity. Analysis of modern state of the RK law shows that it lacks of complex approach in legal regulation of chemical safety and only separate legal provisions sometimes isolated from each other regulate the bases and procedure of using different types of chemical substances and preparations. It is necessary to take additional measures directed towards strengthening of chemical safety provision. Efficiency of these measures depends on the level of civil-law protection of civil turnover subjects' interests and civil-law regulation of chemical safety.

In view of multidimensionality of chemical safety, its provision is inter-industry and civil law. Against this background, the most topical is study of chemical safety as the subject of civil-law regulation, study of the term and separate types of civil-law means to support chemical safety. The chemical safety should be considered as the system of measures directed towards protection of essential interests of person against chemical influence occurred as a result of failure to comply with the established rules and standards of production, use, re-processing, storage and destruction of dangerous chemical substances.

Topicality: Topicality of the study is connected with the fact that the doctrine of civil law requires legal provision of the right to life and right to health of individual.

The Civil Code of the Republic of Kazakhstan in the Article 13 recognizes the possibility of all citizens to have civil rights. Herewith, the subject matters of these rights may be both property and personal non-property rights and benefits in accordance with the p. 1, Article 115. Due provision of chemical safety directly influences life activity of person since the person and his/her interests are the natural objects of legal protection.

The legal basis for person life activity is the right for recognizing his legal standing and protection of rights and freedoms by all means complying with the law. This right is connected with the right to life out of which all other rights take origin.

In this context, civil-law provision of the right to life and right to health in the field of chemical safety as well as study of life and health as the subject matter of civil-law regulation appear to be especially topical.

The problems of security of life and health in conditions of increasing technological risks in present, have been studying for many years in countries with a high level of development of modern technology [3]. A number of studies are devoted to the legal protection of life and health against chemical threats [4].

Currently, Kazakhstan legal science lacks of fundamentals studies devoted to the issues of legal nature of main personal non-property rights of person – right to life and right to health in the field of chemical safety, issues of implementation thereof by means of civil law provisions and response to the facts of breach of the specified non-property rights by means of these provisions. The issues of these rights and measures of civil-law influence in order to avoid breaches of these rights are not sufficiently developed.

Thus, we have tried to conduct complex study of civil-law provision of the right to life and right to health in the field of chemical industry, consequences of their breach, ways and forms of protection thereof, by formulating our vision, our approach and position on these issues.

The goal of study is research of the legal bases of civil-law regulation of the relationships related to provision of the right to life and right to health in the field of chemical safety, ways and forms of their protection as well as offers to update the civil law of the Republic of Kazakhstan.

The established goal of the study is achieved by solving the following tasks:

- To classify the civil-law relationships, the object of which is human life and human health;
- To identify the peculiarities of the civil law provisions that regulate the right to life and right to health;
- To define and disclose the ways of civil-law protection against breaches of the right to life and right to health in the field of chemical safety;
- To develop certain theoretical and practical offers to enhance the law in the field of civil-law provision of the right to life and health in the field of chemical safety.

The methods of study are the methods of analysis and synthesis, generalization and analogy. Special and private methods were also used: formal-logical, comparative-legal, historical, forecasting for the purposes of revealing the directions of law enhancement in the considered field.

Main Part: The applicable civil law of the Republic of Kazakhstan regulates personal non-property rights as the subject matters of civil law. The provisions of § 3 of the Chapter 3, Civil Code of the Republic of Kazakhstan (Articles 141-146) are devoted to them. But it is worthy of noting that there are shortages of legal regulation of such non-person rights as the right to life and health.

It is worthy of noting that the section 3 of the Civil Code of the Republic Kazakhstan starts from the Article 141 which contains the provisions on protection of personal non-property rights. Thus, the legislator mentions about protection of personal non-property rights from the beginning without giving general definition of personal non-property rights. Therefore, we should be governed by the p. 3 of the Article 115 of the Civil Code of the Republic of Kazakhstan only.

Neither Civil Code of the Republic of Kazakhstan, nor any other regulatory legal act of the Republic of Kazakhstan contains any legal definition of such personal non-property rights as the right to life and health.

Further the legislator specified only some personal non-property rights. They include: right to personal life secret protection, right to own image, right to security of dwelling (Articles 144-146 of the Civil Code of the RK). Thus, the situation is some important personal non-property rights didn't obtain definition thereof in the Code.

The more detailed list of personal non-property rights subject to protection in accordance with the Article 141 of the Civil Code of the Republic of Kazakhstan is defined by the Regulatory Resolution of the Supreme Code of the Republic of Kazakhstan dated June 21, 2001, No 3 "Administration of moral harm indemnification legislation by the courts". The paragraph 3 of this Resolution provides for: "The personal non-property rights and benefits, violation, forfeiture or denial of which may cause moral harm to a person affected shall be deemed to be the benefits belonging to a citizen from birth or in view of the law and the rights which are inseparably related to its personality" [5]. It provides for separate bases for classification of personal non-property rights, their inalienability and absolute nature as the basic characteristics of these rights. However, this Regulatory

Resolution of the Supreme Code of the Republic of Kazakhstan doesn't contain the legal norms providing for the right to life and health.

We consider that the general provisions on personal non-property rights should be provided by the Civil Code of the Republic of Kazakhstan in more system-based form. At least general definitions of such personal non-property rights as the right to life and health need to be given. The next step should be determination of the legal regime of the personal non-property right.

Let's consider the norms of the CIS Model Civil Code for illustration. The Article 38 called "Personal non-property rights and other non-property benefits" contains the general list of personal non-property rights: "Life and health, honor and dignity of personality, personal inviolability, business reputation, inviolability of private life, personal and family secret, right to free movement, choice of place of stay and residence, right to name, right to image, right to authorship, other personal non-property rights and other non-property benefits belonging to the citizen from birth or in view of the law, shall be unalienable and non-transferable in any other way. The personal non-property rights and other non-property benefits, belonging to the deceased may be exercised and protected by other persons including the successors of a right holder in a manner and subject to the procedure provided by the law" [6].

It should be taken into consideration that this Model Code was adopted by the Resolution of the Interparliamentary Assembly of the CIS members-states in Saint-Petersburg city on October 29, 1994. The Civil Code of the Republic of Kazakhstan had been already adopted at that time. This evidences parallel development of legal ideas of the civil law within the frameworks of CIS.

The first part of the Civil Code of the Russian Federation appeared to be more susceptible to the legal ideas of the CIS Model Civil Code. This follows from the name of the chapter 8 of the Civil Code of the Russian Federation which is called "Non-property benefits and their protection" [7]. It is worthy of noting that the Civil Code of the Russian Federation sufficiently fully lists non-property benefits protected by the civil law, including such subject matters thereof as life and health.

Detailed description of values which are the group of human rights can be found in international sources such as the General Declaration of Human Rights 1948 [8].

Everything this serves as an example of insufficient development of legal regulation of personal non-property rights and legal groundwork of the right to life and right to health in the law of the Republic of Kazakhstan.

By analyzing the regulatory and legal framework related to the right to life, we come to a conclusion that in spite of the right to life being included into the basic, essential rights, it should be noted that independence of natural right from the legislator is conventional. Thus, the issues of determination of the law subjects' powers are differently defined in the law content within the frameworks of certain branches of law.

The right to life should be considered as a naturally originated measure of freedom of an individual to define his or her behavior in his or her interests to save and manage life being the essence of legal relationship the subject matter of which is life and to require certain behavior or avoidance thereof from any third parties [9].

The highest non-property benefit of human is his or her health. According to the Code of the Republic of Kazakhstan dated September 18, 2009, No 193-IV "People's health and system of healthcare", health is a condition of full physical, spiritual (psychic) and social welfare and not only absence of diseases and physical defects. Here the legislator gives the definition of social health. This is complex characteristics of psychic, physical and social welfare of population which reflects the efforts of society to keep healthy life style, including healthy food, prevention from diseases and traumas as well as prevention of influence of life environment unfavorable factors [10].

It should be noted that the right to health is widely studied in the works of foreign authors [11]. A number of special studies are devoted to the legal mechanisms for the accomplishing and protection of this right [12].

Civil-law regulation of the right to life and right to health in the field of chemical safety represents complex civil-law and other regulatory formations including certain aggregate of lawful ways of social relationships legal regulation. Classification of civil-law ways of provision of the right to life and right to health in the field of chemical safety under different bases will lead to further system-based and subsequent development of scientific knowledge about civil-law means of provision that will make it possible to update civil-law mechanism of provision of the right to life and right to health in the field of chemical safety.

When speaking about such personal non-property rights as life and health the goals of legal regulation are to provide recognizing them as the supreme values protected by law.

Therefore, it is necessary to provide the mechanism of these rights protection in case of their breach and restoration of other rights which were infringed as a result

of infringement of the right for life and health to the possible extent. The sanctions of responsibility for breach should be severe as far as it is possible (including in civil-law aspect).

In the context of jurisdiction form of rights protection, we think that it is necessary to be based on applicability of separate ways of rights protection in the field of regulation of personal non-property relationships. It is necessary to take into consideration that the ways of protection are divided into general (universal) and special (specific) under the field of application [13, P. 15].

Almost all general ways of rights protection will be applied to protection of personal non-property rights since absolute non-property and relative property relationships arise with regard to personal non-property rights to life and health. Herewith, formation of special ways of personal non-property rights to life and health and property rights derived from them is not excluded.

It is generally known that real condition of the legal system should be assessed based on the level of legal protection provided by the law.

Herewith, it is worthy of noting that many aspects of personal non-property rights protection are not developed in the theory of modern civil law of the RK. Significant attention is paid to protection of property rights arisen out of traditional contracts which mediate the civil turnover [14, P. 12] in the law books.

A big number of international authorities deal with the issues of provision of the right for life and right for health in the field of chemical safety [15]. In many countries, for example in the United States, the work programs to ensure the chemical safety are created and developed the specific state policies [16].

Such work has international significance since the national borders are not obstacle for potential chemical contamination. However, to provide safe management by chemical substances use, significant efforts are needed at both national and international level.

Cooperation in the field of chemical safety between the United Nations Organization Environment Program (UNEP), International Labor Organization (ILO) and World Health Organization (WHO) within the frameworks of the International Program of Chemical Safety (IPCS) should be the basis for international cooperation in the field of safe management by the toxic chemical substances use.

In view of wide use of chemical substances at production sites and in everyday life and their negative influence upon environment and health of people the Agenda of XXO [17, P. 3-7] was adopted in 1992 at the UN Conference. The chapter 19 of this document called

“Environmentally friendly management by toxic chemical substances including prevention from illegal international transportation of toxic and dangerous products” defined the basic goals and priority fields of actions to optimize the turnover and usage of chemical substances.

It says that chemical contamination may cause “significant damage to people health and genetic fund”. The chapter 19 especially underlines the needs of developing countries and those problems which they face and recognizes that there are no national systems required to cope with chemical risks in many countries and the majority of the countries suffers from lack of the scientific means for collection of evidences of wrong use of toxic chemicals and for conviction for chemical chemicals influence upon environment and human health.

The chapter 19 also contains appeal to the managing bodies of the World Health Organization (WHO) and International Labor Organization (ILO) to adjoin the UNEP in holding the global forum on chemical safety promotion. This resulted in creation of intergovernmental forum on chemical safety (IFCS). The main achievement of the IFCS is international recognition and support of cross-sector and cross-group participation of the states in international political process which considers the issues of chemical safety.

To coordinate the measures taken at the national, regional and global levels the intergovernmental forum on chemical safety (IFCS) in 1994. Its basic task became establishment of actions priorities, development of complex and agreed strategy in provision of safe management by chemical substances use. Such global international legal documents as Basel Convention on control over trans-border transportation of dangerous wastes, Stockholm Convention on POPs, Rotterdam Convention on the procedure of preliminary grounded permit with regard to separate dangerous chemical substances and pesticides in international trade.

Based on the analysis of international experience, we offer to develop and adopt the Chemical Safety Convention. The goal of this Convention is identification of main ways and means of formation of the balanced state policy on the issues of chemical safety level increase taking into consideration the world experience in the field of chemical substances handling, cooperation with the appropriate authorities of foreign countries and international organizations to decrease the probability of causing damage to life and health of people and environment in the process of chemical substances handling.

The ways and means of chemical safety level increase in the country are defined in accordance with the basic principles of international law in the field of chemical safety and chemical substances handling. These principles were developed by Organization for Economic Cooperation and Development (OECD) [18].

The Concept should become the methodological basis to enter into interstate agreements for provision of chemical safety, basis for development of national law in the part of regulation of the relationships on production, usage, reprocessing, storage and disposal of dangerous chemical substances.

The Study Held Makes it Possible to Represent the Following Conclusions:

- As a result of the study held we came to a conclusion that the persona; non-property relationships are still of marginal significance in the subject matter of the civil law regulation. It is caused by the fact that there is insufficient number of the norms devoted to legal regulation of separate civil legal relationships by means of which the right to life and health may be exercised in different aspects. In this connection, we offer to supplement the Civil Code of the RK with the norms which will be devoted to the civil-law regulation of the personal non-property rights.
- The conclusion that the idea of personal non-property rights is very closely connected with the legal status of a person is substantiated and complies with the task set. The recognized legal personality is one of the forms to recognize personal non-property rights and to render the possibility to exercise such rights.
- In the context of personal non-property rights and benefits protection, applicability of jurisdiction procedure of rights protection and possibilities of active self-protection of these rights should be noted. As to the ways of these rights protection, it should be noted that almost all general ways of protection shall be applied to protection of personal non-property rights since both absolute non-property and relative property relationships arise with regard to the personal non-property rights to life and health. Herewith, formation of special ways of personal non-property rights to life and health and property rights derived from them is not excluded.
- It is substantiated that the right to life and health in the field of chemical safety is provided by the complex of legal, organizational, financial, material

and information measures designated to prevent and liquidate real and potential threats of safety and mitigation of consequences.

Issue of the chemical safety of human life activities is better considered in the context of rights and legal interests of the civil law subjects the mechanism of provision of which needs to be provided by the law. The civil-law means of provision of the human rights and legal interests as the activities on provision of chemical safety is the insurance contract, civil-law responsibility for breach of chemical safety requirements, tort liabilities and other means of provision.

- There is a need in complex approach to the problems of chemical safety provision. Altogether, chemical safety being the complex problem consisting of many different level elements with numerous and multi factor links should be provided within the frameworks of state regulations taking into account all components of the chemical safety system and considered as an integral part of the national safety, bases of provision of stable operation and development of the state.
- The necessity to develop and adopt the Chemical Safety Convention is substantiated. It is substantiated that the important factor negatively influencing participation of the Republic of Kazakhstan in international cooperation on the issues of civil-law provision of the right to life and health in the field of chemical safety is poor coordination of the activities on provision of safe handling of chemical substances at the national level and as a result insufficient institutional potential for development of the required regulatory and legal framework and infrastructure.

REFERENCES

1. Constitution of the Republic of Kazakhstan (Adopted at the Republican referendum on August 30, 1995). In News of the Parliament of the Republic of Kazakhstan, 1996, pp: 4.
2. Dautbayeva-Mukhtarova, A.E., 2012. Life and health as the objects of civil law of the Republic of Kazakhstan, M.S. (Law) thesis, Bishkek..
3. Danish Mohan Safety as a Human Right. Health and Human Rights, 2002.
4. Murray, C.J. and A.D. Lopez, 1996. The Global Burden of Disease. Cambridge, MA: Harvard University Press.
5. Regulatory resolution of the Supreme Court of the Republic of Kazakhstan “Administration of moral harm indemnification legislation by the courts”, June 21, 2001. Bulletin of the Supreme Court of the Republic of Kazakhstan, 2001, pp: 6-4.
6. Model Civil Code for the States-Members of the Commonwealth of Independent States Adopted at the Fifth Plenary Meeting of the Interparliamentary Assembly of the States-Members of the Commonwealth of Independent States, October 29, 1994. <http://www.iacis.ru>.
7. Civil Code of the Russian Federation. First part: adopted by the State Duma on October 21, 1994. In Collection of the law of the RF, 1994, pp: 32.
8. Universal Declaration of Human Rights, Adopted by the General Assembly on December 10. UN Doc. GA/RES/217 A (III), 1948.
9. Reznik, E.S., 2007. Right to life: civil-law aspects, M.S. (Law) thesis, Yekaterinburg.
10. Code of the Republic of Kazakhstan “People health and system of health care” dated September 18, 2009 No 193-IV. News of the Parliament of the Republic of Kazakhstan, 2009, pp: 20-21.
11. Terminski, B., 2013. Selected Bibliography on Human Right to Health. Geneva: University of Geneva.
12. Clapham, A. and M. Robinson, 2009. Realizing the Right to Health. Zurich: Rüffer & Rub.
13. Suleimenov, M.K., 2005. Protection of the civil rights under the law of the Republic of Kazakhstan. In Protection of the Civil Rights: Materials of International Scientific Conference. Alma-Ata, pp: 15.
14. Goryacheva, E.V., 2004. Responsibility of the Entrepreneurs for Breach of Contractual Obligations. Alma-Ata, pp: 21.
15. Perrow, C., 1999. Normal Accidents: Living With High Risk Technologies. Princeton, NJ: Princeton University Press.
16. A National Strategy for CBRNE Standards. National Science and Technology Council Committee on Homeland and National Security. Washington DC, 2011.
17. Agenda 21. The United Nations Program of Actions from Rio. United Nations, 1993.
18. OECD Guiding Principles for Chemical Accident Prevention, Preparedness and Response Guidance for Industry (Including Management and Labor), Public Authorities, Communities and Other Stakeholders. In OECD Environment, Health and Safety Publications Series on Chemical Accidents, 2003, pp: 10.