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## CRIMINAL OFFENSES THAT INFRINGE ON THE PROTECTION AND EFFECTIVE USE OF LAND AND SUBSURFACE RESOURCES

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*The article discusses the controversial issues of acquiring unauthorized products, that is, without obtaining a license for the right to use subsoil, mining. From the teachings of scientific literature and law enforcement practice, it can be seen that socialless mining is qualified in isolated cases as a disclosure of entrepreneurship, in others - as a violation of the rules for the protection and use of subsoil, in third cases - as theft.*

**Key words:** license for the right to use subsoil, unauthorized subsoil use, criminal liability, environmental crime, illegal business.

Article 331 of the Criminal Code of the Republic of Kazakhstan is devoted to the crime of violating the legislation on the continental shelf of the Republic of Kazakhstan and the exclusive economic zone of the Republic of Kazakhstan.

*Public danger* is the undermining of the environmental safety of the Republic of Kazakhstan and the established procedure for the use of the continental shelf and the special economic zone. The continental shelf of the Republic of Kazakhstan includes the sea and the subsurface of the underwater zones of the Republic of Kazakhstan located outside the territorial sea, the natural territory of which extends to the outer border of the underwater border of the mainland.

*The continental shelf* is a coastal sea, a shallow ocean, a part of the water area that, like the geological structure of the neighboring land, is economically profitable and productive, inhabited by living organisms with certain internal and external boundaries. Violation of the regime of the continental shelf is considered a violation of the procedure for carrying out activities related to the exploration and development of natural resources of the seabed and subsurface, including the creation and use of artificial islands, structures and installations, their dismantling, disposal of waste and other materials, as well as conducting scientific research at sea.

The 1958 Geneva Convention developed a concept for the development of natural resources adjacent to the shores of the continental shelf, which cover the surface and subsurface of

the underwater areas of the State, but are located outside the territorial sea, at a depth of 200 meters or beyond such a place that the depth of the waters covering it allows. It consists of the surface of the sea floor and its subsurface sediments located in a continuous array of the continental shelf, regardless of depth. The inner boundary of the continental shelf is the outer boundary of the territorial sea, and in the case where the outer boundary of the submerged continent does not exceed 200 nautical miles, the width of the territorial sea is 200 nautical miles from the measured base. If the underwater edge of the mainland extends from the specified bases to a distance of more than 200 nautical miles, the outer boundary corresponds to the outer boundary of the underwater edge of the mainland, defined in accordance with international law.

Poisoning, pollution, other damage to land by harmful products of economic or self-service activities as a result of dumping of land with industrial, household or other emissions or waste, as well as violation of the rules for working with them during the storage, use, transportation or burial of pesticides, pesticides, fertilizers, plant growth stimulants or other dangerous chemical, radioactive or biological substances, 332 of the Criminal Code of the Republic of Kazakhstan is liable if these actions entail or may cause serious damage to the environment or cause harm to human health. Criminal offenses land damage (Article 332) the number of criminal offenses registered in the

Republic of Kazakhstan in the period from 2008 to 2017 is 52; criminal prosecution under Article 332 has been suspended-54; criminal offenses for which criminal proceedings have been suspended-27; the number of completed criminal cases for criminal offenses is 6.

Unauthorized use of subsurface resources, as well as unauthorized extraction of minerals, if these actions are committed with the purpose of causing significant damage, we are qualified for a criminal offense of unauthorized use of subsurface resources under Article 334 of the Criminal Code of the Republic of Kazakhstan.

There are minerals in the bowels of the Earth. They are a natural mineral substance suitable for use in material production, found in a solid, liquid or gaseous state (including those found in groundwater and healing mud). The most common types of them are minerals-sand, clay, gravel, crushed stone, etc., which, after natural or slightly processed and refined, are mainly used to meet the needs of local farms. Kazakhstan is one of the countries with a rich mineral resource base on earth. Of the 55 different minerals extracted in the world (29 of them are metals), 39 are extracted in Kazakhstan. Relatively high indicators are produced only in Russia – 49, China – 45, Australia and the United States – 42, Brazil – 41 different types of minerals.

In terms of oil and natural gas reserves, the Republic is one of the top ten countries in the world, where stone and brown coal, iron, hornite, lead, zinc, copper, uranium and rare earth metals are found.

The mineral and raw materials complex of Kazakhstan occupies a fairly strong position in the world mineral raw materials balance, has a great influence on the development and expansion of the global mineral raw materials market. According to the information and analytical center of the committee of Geology and subsoil development of the Ministry of energy and Mineral Resources (2003), Kazakhstan's share in the world's studied reserves is as follows: gold-2.7% (8th place in the world), silver – 16%, copper – 7.1%, manganese – 30% (2nd place), lead – 22%, zinc – 15.2%, barite – 47.2% (1st place), iron – 6%, cobalt – 3.9% (5th place), chromium – 37.6% (8th place), bauxite – 1.4% (10th place), nickel – 1.4% (12th place).

Recently, cases of unauthorized extraction of

natural sand, rock, soil and other types of common minerals have become more frequent.

These actions cause significant damage not only to the material interests of the state, but also to the ecological state of the region, since mining is carried out mainly in the vicinity and on the territory of reservoirs, on forest and agricultural lands.

In the Constitution of the Republic of Kazakhstan, Part 3 of Article 6 states that «land and its subsoil, water sources, flora and fauna, and other natural resources are state-owned. Land may also be privately owned on the grounds, conditions and within the limits established by law» [1]. Minerals are natural mineral formations and organic substances with useful components, whose chemical composition and physical properties allow them to be used in the field of material production and consumption directly or after processing.

Natural bitumen is a mineral of organic origin with a primary hydrocarbon base, lying in the bowels of the Earth in a solid, viscous and viscous-plastic State, the production of which in natural conditions is technically impossible by well methods.

Solid minerals are natural mineral formations, organic substances and their mixtures that exist in the subsurface or on the surface of the Earth in a solid state.

Solid minerals are divided into ore and non-ore. Mineral solid minerals are SAF metals, ores of Ferrous, Non-Ferrous, rare, radioactive metals and rare earth elements. And the rest of the useful solid fossils are recognized as non-ore.

The most common are non-ore solid minerals that are used for construction and other economic purposes in their natural state or with minor processing and refining, and are widely distributed in the subsurface. Common useful solid minerals include: marbles, quartzites, Quartz-fieldstone rocks, granites, syenites, diorites, gabbro, rhyolites (liparites), andesites, diabases, basalts, volcanic tuff, slags, pumice, volcanic glass and glass rocks, small round stones and gravel, gravel-sand (sand-gravel) mixtures, sands and sandstones, loam and loam rocks (suglins, siltstones, argyllites, clay shales), table salt, gypsum rocks, mergers, limestones, including shellfish, Cretaceous rocks, Dolomites, limestone-dolomite rocks, silica rocks (trepels,

opokas, diatomites), natural pigments, peat, therapeutic mud. State ownership of subsurface resources is one of the pillars of the state sovereignty of the Republic of Kazakhstan. In accordance with the law of the Republic of Kazakhstan «On Subsoil and subsoil use», the right to use subsoil is granted only by the State [59]. In this case, the transfer of such a right is carried out by entering into a contract, and in some cases by issuing a corresponding permit by a state body.

The grounds for the emergence and acquisition of the right of subsurface use are as follows:

- license for subsurface use;
- on the basis of a subsurface use contract.

The right of subsurface use in the following cases:

- transfer of subsurface use rights;
- transfer of the right of subsurface use (share in the right of subsurface use) on the basis of Civil Transactions;
- transfer of subsurface use rights in the order of succession during the reorganization of a legal entity.

In this regard, it is illegal to extract minerals without a contract or the appropriate permission of a state body.

On January 1, 2015, the new Criminal Code of the Republic of Kazakhstan was put into effect. For the first time in the new Code, Article 334. The article provides for criminal liability for «unauthorized use of subsurface resources», including unauthorized mining of minerals. Previously, persons who committed such actions were brought to administrative responsibility. These criminal offenses were registered in the country from 2008 to 2017 as follows [2].

Starting this year, criminal liability under Part 1 of Article 344 of the Criminal Code will arise in the event of significant damage caused by unauthorized use of subsurface resources. In case of causing major damage, liability occurs in accordance with Part 2, and in case of committing such actions by a criminal group, liability occurs in accordance with Part 3 of this article of the code.

This article belongs to the blank disposition, as it refers to the norms (legislation) of other branches of law – labor, civil, administrative and other rights. For example, the Environmental Code of the Republic of Kazakhstan dated

January 9, 2007, the Land Code of the Republic of Kazakhstan dated June 20, 2003, the Code of the Republic of Kazakhstan on administrative offenses dated July 5, 2014, the law of the Republic of Kazakhstan «On Subsoil and Subsoil Use» dated December 27, 2017, etc.»

The category provided for in parts 1-2 of Article 344 is an alternative sanction. Because two or more types are specified. For example, Part 1 of Article 344 is punishable by a fine of up to 300 MCI with or without deprivation of the right to hold certain positions or engage in certain activities for a period of up to 3 years, or correctional labor in the same amount, or involvement in public works for a period of up to two hundred hours, or arrest for a period of up to fifty days.

Article 334 of the Criminal Code of the Republic of Kazakhstan in the period from 2008 to 2017, the number of registered criminal offenses in the Republic of Kazakhstan – 458; the number of criminal offenses – 1186; the number of criminal offenses – 65; the number of completed criminal cases – 12; the number of criminal offenses – 65; convicted persons – 3.

And the punishment of Part 3 is relative-a well-defined sanction, since there are the highest and lowest limits of punishment. «3 ..punishable by imprisonment for a term of up to five years» [3]. In this article, up to 5 years is the maximum limit of punishment, and the minimum limit is 6 months (we define it in Part 3 of Article 46 of the Criminal Code of the Republic of Kazakhstan).

The direct object of the crime is public relations in the field of protection and use of subsurface resources. The subject of the crime is recognized as minerals and mineral raw materials [4, 486].

Natural mineral formations, organic substances and their mixtures, which are in a solid state in the bowels of the Earth or on the surface of the earth, are considered useful solid fossils.

Mineral solid minerals are divided into ore and non-ore mineral solid minerals include ores of SAF metals, Ferrous, Non-Ferrous, rare, radioactive metals, and rare earth elements. The rest are considered non-mineralized solid minerals.

The objective side is the independent use of subsurface resources, as well as the independent extraction of minerals. Exploitation is the ability

to legally ensure the extraction of minerals, natural properties of mineral raw materials, as well as profit from it.

State geological study of subsurface resources – operations related to monitoring the state of subsurface resources, studying the geological structure of subsurface areas, as well as individual parts of the Republic and the entire territory as a whole, determining the prospects for the presence of minerals in them through search and survey and evaluation works, drawing up state geological maps that form the information basis of subsurface use. That is, data on the construction of the subsurface, current trends in it, the regime of underground water; earthquake prediction, etc.

Mining—a whole complex of works related to the extraction of minerals from the subsurface to the surface, as well as extraction from man-made mineral formations, including temporary storage of mineral raw materials.

Construction or operation of underground structures not related to exploration or production – works on the construction or operation of underground structures for the storage of oil and gas, as well as underground engineering structures for the burial of radioactive waste, harmful substances and wastewater. For example: for the construction of tunnels, subways,

pipelines, industrial facilities, oil and gas storage facilities, for the disposal of industrial waste, for the discharge of wastewater.

Depending on the degree of public danger, Part 1 of Article 334 is the main component, since this part does not specify aggravating or mitigating circumstances of liability. And parts 2-3 of Article 334 are recognized as aggravating liability. Because there is a huge damage to the environment, as well as actions committed by a criminal group.

Depending on the method of description, article 334 is a simple composition. Because it encroaches on one object of criminal activity. The crime under article 334 refers to the material composition, there is a large, especially large damage. When one of these consequences occurs, the crime is considered over. Consequences of a crime: major damage to the environment under Part 1 of Article 334 of the Criminal Code of the Republic of Kazakhstan (Article 38 of the Criminal Code of the Republic of Kazakhstan). the amount exceeding one thousand monthly calculation indices), and the largest damage to the environment under Part 2 of Article 334 of the Criminal Code of the Republic of Kazakhstan (Article 3 of the Criminal Code of the Republic of Kazakhstan). 20 thousand monthly calculation indices.

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## УГОЛОВНЫЕ ПРАВОНАРУШЕНИЯ, НАРУШАЮЩИЕ ПРАВА ОХРАНЫ И ЭФФЕКТИВНОГО ИСПОЛЬЗОВАНИЯ ЗЕМЛИ И НЕДР

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*В статье рассматриваются спорные вопросы квалификации самовольной, то есть без получения лицензии на право пользования землей, недрами, добычи полезных ископаемых. Изучение научной литературы и правоприменительной практики показывает, что безлицензионная добыча полезных ископаемых квалифицируется в одних случаях как незаконное предпринимательство, в других – как нарушение правил охраны и использования недр, в третьих – как кража.*

**Ключевые слова:** земля, лицензия на право пользования недрами, самовольное недропользование, уголовная ответственность, экологическое преступление, незаконно предпринимательство.