

B.A. Zharmakhanbetova¹,  A.B. Saktaganova^{2*},  I.S. Saktaganova¹ ¹L.N. Gumilyov Eurasian National University
Astana, 010000, Republic of Kazakhstan²A.K. Kussayinov Eurasian Humanities Institute
Astana, 010009, Republic of Kazakhstan*e-mail: aridnissakta.11@gmail.com

CONSTITUTIONAL MODEL FOR DETERMINING THE RIGHTS OF SUBJECTS IN THE FIELD OF SUBSOIL USE

Abstract

The article analyzes the Constitutional model for determining subjects' rights in the field of subsoil use in Kazakhstan. The role of the Republic of Kazakhstan's Constitution in forming the legal basis for the use and protection of subsoil, including the rights of the state and individuals, is studied. The main provisions regulating access to natural resources and mechanisms for their protection are considered. It examines the pivotal role of the Constitution of the Republic of Kazakhstan in establishing a legal framework for the use and protection of subsoil resources, including the delineation of rights for both the state and individuals. Attention is focused on balancing interests between public and private entities and the need to comply with environmental standards. It analyzes comparative approaches from other countries to identify best practices and potential pitfalls that Kazakhstan could avoid. Furthermore, it emphasizes the need for greater stakeholder engagement in decision-making processes to ensure that the rights and interests of local communities are adequately represented and protected. As a result of the analysis, current problems of legal regulation are identified, and recommendations are proposed for improving legislation in subsoil use, aimed at ensuring sustainable and rational use of natural resources in Kazakhstan.

Keywords: rights of subjects, state regulation, Constitution, subsoil use, private interests.

Introduction

Constitutional law science emphasizes that the fundamental indicator of the legal structure is the delineation at the constitutional level of the subjects of jurisdiction and powers between the state and its subjects [1]. Subsoil use is one of the key areas of the economy of Kazakhstan, providing a significant share of the state budget and contributing to the socio-economic development of the country. In the context of global changes and increasing environmental challenges, the issue of legal regulation in this area is becoming especially important. The constitutional model for determining the rights of subjects in the field of subsoil use serves as the basis for the formation of a sustainable and effective system of natural resource management.

The Constitution of the Republic of Kazakhstan enshrines the basic principles governing subsoil rights, establishing a balance between the interests of the state and private rights. However, the practice of applying these norms reveals several problems that require detailed analysis and subsequent reforms. In this article, we consider the key aspects of the Constitutional model, examine the mechanisms for protecting the rights of subsoil users, and identify current challenges facing the legislation. The purpose of the study is moreover to analyze the current legal regulation also to develop recommendations for its improvement to ensure sustainable and rational use of subsoil.

In the Code “On Subsoil and Subsoil Use” in Article 11 it is stated that “Following the Constitution of the Republic of Kazakhstan, subsoil belongs to the people of Kazakhstan. On behalf of the people of Kazakhstan, the right of ownership is exercised by the state[2]. At the same time, the exercise of the right of ownership by the state is realized through the state property regime in the interests of the people of Kazakhstan.”

The concept that the subsoil belongs to the people is based on the principle that natural resources are common property that should be used in the interests of society as a whole, rather than individuals or groups. This idea is expressed in legislative and legal norms designed to ensure a fair distribution

of resources and the protection of citizens' rights. The Constitution of the Republic of Kazakhstan (Article 6) clearly states that the subsoil and other natural resources belong to the people. This implies that the state, acting on behalf of the people, manages and regulates the use of the subsoil to ensure the common good.

Laws regulating subsoil use often contain provisions stating that licenses for the extraction and use of subsoil are issued taking into account the interests of society. For example, the Law of the Republic of Kazakhstan "On Subsoil and Subsoil Use" sets requirements for environmental safety and social obligations of subsoil users. This approach ensures a balance between the economic interests of the state and private companies and the rights and interests of local communities. Recognition of the people's right to a clean and healthy environment also supports the concept of ownership of subsoil by the people. This right implies that the use of natural resources should be carried out taking into account the interests of current and future generations.

In Kazakhstan, licenses for subsoil use are issued taking into account the public interest, which includes environmental impact assessments and consultations with local communities. This is an example of the principle that subsoil belongs to the people, as public interests are taken into account in the decision-making process. Subsoil use licenses are issued following legislation that requires environmental impact assessments and consideration of the views of local communities. At the stage of preparing extraction projects, companies must consult with local communities to understand their needs and interests.

Social obligations of subsoil users: Legislation requires companies engaged in mining to implement social programs aimed at the development of local communities. This may include investments in infrastructure, education, and health care, which is directly related to the concept that the subsoil serves the interests of the people.

Materials and methods of research

This article uses a variety of methods and materials to deeply analyze the topic of citizen participation in decision-making in the field of subsoil use in Kazakhstan. Legislation research: An analysis of the current legal acts governing subsoil use in Kazakhstan was conducted, including the Constitution, laws on subsoil and the environment, as well as by-laws. This allowed us to identify key provisions regarding citizens' rights and participation mechanisms. In comparison with international practice, examples of citizen participation in subsoil use from other countries (for example, Norway, Canada, and Chile) were considered. This helped to identify best practices and opportunities for improving Kazakhstan's legislation. The following legal acts were used: the Constitution of the Republic of Kazakhstan, the Law of the Republic of Kazakhstan "On Subsoil and Subsoil Use", laws on environmental protection, and other relevant documents. Scientific articles, studies, and research results in the fields of ecology, law, and natural resource management were also studied.

Results and its discussion

Citizen participation in decision-making is currently one of the important concepts in the field of subsoil use since Kazakhstan citizens are the owners of subsoil. Within the framework of projects for the development of deposits, public discussions are held, where citizens can express their opinions and suggestions. This demonstrates that subsoil is not the property of individual companies but belongs to the entire society. Citizens, as subjects of subsoil use, have the right to influence processes related to subsoil use, which contributes to more transparent and fair resource management. As a legal basis for citizen participation, the Constitution of the Republic of Kazakhstan guarantees citizens the right to participate in the management of public and state affairs, including environmental and environmental issues [3]. The legislation regulating subsoil use also includes provisions regarding the mandatory consideration of public opinion. Public discussions and consultations have also begun to be actively applied. When planning field development projects, public discussions are a required step. These events allow citizens to express their opinions, propose changes, and ask questions regarding the expected impact of projects on the environment and social infrastructure. When

developing new oil or gas fields, meetings are held with residents, where potential consequences for the environment and life of the population are discussed.

Participation in environmental impact assessments (EIA). One point worth noting is that the law requires environmental impact assessments, in which citizens can make suggestions and comments. This creates a feedback mechanism between government agencies, companies, and the public. EIA processes include public hearings, where company representatives and government officials discuss projects with residents [4].

The concept for citizens is an open right to information. Citizens have the right to access information about planned projects related to subsoil use. This right includes receiving data on possible environmental and social impacts, which allows citizens to make more informed decisions. Requirements have been established for posting information about licenses on the websites of government agencies, making it accessible to a wide audience [5].

There is a major role for regulatory legal acts and public organizations. Non-governmental organizations play an important role in protecting the interests of citizens and promoting the ideas of sustainable use of natural resources. They can act as intermediaries between the state, companies, and society, organizing campaigns and consultations. Citizen participation in decision-making in the field of subsoil use in Kazakhstan is an important aspect of democratic governance [6]. It not only helps to take into account the interests of the population but also promotes a more sustainable and responsible use of natural resources. Maintaining an open dialogue between all stakeholders will contribute to effective management and environmental protection, as well as improving the quality of life of citizens.

The concept of ownership of the subsoil by the people is also widely used in foreign countries. Let us consider several examples: one of the advanced countries is Norway. In Norway, natural resources, including oil and gas, are state-owned. According to the Constitution, the subsoil belongs to the people, and the state manages its use through Statoil (now Equinor). All revenues from resource extraction go to the State Pension Fund, which provides social programs and economic stability for future generations. This is an example of how the principles of fairness and social responsibility are integrated into the natural resource management system [7].

In Canada, natural resources, including minerals, are formally owned by the provinces and territories, but their use is subject to strict regulation. Legislation requires consideration of the public interest, consultation with local communities, especially Aboriginal peoples, and environmental safety. Examples of such practices include mandatory environmental impact assessments and Aboriginal co-management agreements, which emphasize that minerals belong to the government but also to the public.

The Constitution of Canada divides powers between the federal and provincial governments by establishing their powers over the areas of jurisdiction listed in the act. In those areas of the country where the provinces own the subsoil, they also have the power to regulate subsoil use relations within their territories. In those areas of Canada where the federal government owns the subsoil (usually areas north of the sixtieth degree of latitude and on the continental shelf), the main powers in the area of subsoil use belong to the federal government. According to the Constitution, the federal government has the power to regulate the following areas of jurisdiction throughout Canada: •state property; •tax system; •Indigenous lands. Federal governments regulate interprovincial oil and gas trade, as well as the export of hydrocarbons, including through oil and gas pipelines. In addition, the federal government has the right to assume direct control in an emergency, such as an energy crisis. Federal government bodies may establish various types of taxes and explore mineral resources in certain areas of the country. The continental shelf of Canada is also under the jurisdiction of federal government bodies (Article 109 of the Constitution Act, 1867). The provinces retain powers to: •develop mineral resources and minerals; •export primary production of non-renewable minerals to other provinces; •pay for the use of mineral resources [8].

We can also consider the country of Chile, where the Constitution states that all natural resources, including copper and lithium, belong to the people. An important part of the legislative framework is the Minerals Act, which regulates the extraction and use of resources, with the obligatory consideration of the interests of local communities. The principles of participation and transparency are embedded in the licensing processes, where public consultation is mandatory. This reflects the desire to ensure that resources serve the interests of the whole society [9].

These examples show that the concept of subsoil ownership is implemented differently depending on the context of each country, but the basic idea is to ensure that natural resources are used fairly and responsibly, taking into account the interests of society and future generations.

Subsoil use relations in the USA are also regulated on the basis of the norm established by Section 8 of Article I of the US Constitution, according to which Congress has the right to regulate trade with foreign countries, between individual states, and with Indian tribes (Part 3). At present, the broad interpretation of the provision on trade has gradually included practically all aspects of the economic life of the USA in the sphere of the regulatory powers of Congress and, after numerous judicial interpretations, subsoil use relations have been equated to the constitutional concept of "trade" [10]. An analysis of the provisions of the US Constitution leads to the conclusion that the following powers are within the competence of the federation:

- federal legislation on subsoil resources;
- establishing a general policy on subsoil use and planning the use of subsoil and minerals throughout the United States;
- regulating subsoil ownership relations;
- regulating subsoil use relations on lands belonging to the federation and on the lands of Indian communities;
- managing the oil and gas pipeline system;

According to the Constitution, the following powers are assigned to the states:

- legislative regulation of subsoil use relations on state lands;
- regulating subsoil ownership relations on state lands, as well as other issues not within the competence of the federation [11].

The US Constitution does not establish any other rules that delimit the competence of the federation and the states in the sphere of subsoil use. The powers of the US and state government bodies to establish the procedure for the use of subsoil, and their protection; to own, use, and dispose of geological information about subsoil, to dispose of subsoil; to exercise state control over the use and protection of subsoil, as well as other powers are established in both federal and state legislation [12].

In the United States and Canada, there are two models of distribution of competence in the field of subsoil use: the "right of exclusive ownership" ("eminent domain"), based on the right of ownership of land and subsoil, enshrined in the constitutions, and the "equal owner" model, according to which legal regulation of relations in the field of subsoil use is carried out by the federation and its subjects independently, but based on general principles and standards established by federal legislation. Additional elements of this model are the sphere of joint competence of the federation and its subjects; powers prohibited to the federation; powers banded to the subjects of the federation; as well as the duties of the federation concerning its subjects.

On the one hand, the experience of the USA and Canada shows that regulation of relations in the sphere of subsoil use is more effective if competence in this area is divided between the federation and its subjects based on the delimitation of the right of ownership of subsoil. On the other hand, we believe that at the current stage of development of Russian society, it is necessary to ensure the preservation and strengthening of unified state ownership of subsoil, counteracting the tendency to divide state ownership of individual types of natural resources into federal, regional, and municipal. Thus, the transfer of a unified model of "exclusive ownership" in Russian conditions is inappropriate [13].

On the one hand, the experience of the USA and Canada demonstrates that effective regulation of subsoil use relations often hinges on a clear delineation of competencies between federal and state authorities, underpinned by the principle of ownership rights over subsoil resources. This model allows for a flexible and adaptive regulatory framework that can cater to local needs while ensuring sustainable resource management. On the other hand, in the context of contemporary Russian society, it is imperative to maintain and reinforce a unified state ownership model for subsoil resources. Given the vast geographic and economic disparities within Russia, as well as the potential for regional conflicts over resource allocation, a fragmented approach—where ownership is divided into federal, regional, and municipal tiers—could lead to inconsistencies, inefficiencies, and inequitable resource distribution. Therefore, the transition to an "exclusive ownership" model, prevalent in other jurisdictions, may not align with Russia's current socio-political realities and could undermine the stability of national resource governance. Instead, a centralized approach is essential to foster national unity, ensure equitable access to resources, and facilitate coordinated environmental and economic policies that address both local and national interests.

Examining state regulation of subsoil use in foreign countries also involves analyzing the experiences of neighboring nations. For instance, Kyrgyzstan has a specific regulatory legal act addressing subsoil use—the Subsoil Law enacted in 2018. The Law outlines the procedure for state legal regulation, defines the competencies of state authorities, local state administrations, and local self-government bodies, specifies the rights and obligations of individuals and legal entities, and establishes liability for violations of Kyrgyz Republic legislation regarding subsoil use. Chapter 2 of the Law details the competencies of state institutions concerning subsoil use, including the powers of the government of the Kyrgyz Republic, the authorized state body for subsoil use, local state administrations, and local self-government bodies (Law, 2018). The authorized state body for subsoil use in Kyrgyzstan is the State Committee for Industry and Subsoil Use. To implement state policy and represent the interests of the Republic of Kazakhstan regarding subsoil use, the Government of Kazakhstan designates a central executive body as the competent authority. The Code outlines distinct modes of subsoil use, specifically licensing and contractual arrangements. This central executive body has the power to grant and revoke subsoil use rights for hydrocarbon exploration and production, uranium extraction, and the exploration and extraction of solid minerals. Additionally, it oversees compliance by subsoil users with contract terms related to hydrocarbon and uranium mining, as well as licenses for solid mineral exploration and extraction.

For a more complete picture of the impact of subsurface use on the socio-economic development of the country, it is important to take into account the contribution of this sector to the gross domestic product (GDP) of Kazakhstan. According to the Statistics Committee, the extractive sector accounts for about 16% of the country's GDP in 2023. Revenues from subsurface use account for up to 30% of revenues to the state budget, which makes it a key source of financing for social programs and infrastructure projects. However, despite such a significant role, there are still issues of a fair distribution of these revenues between the mining regions and the center. An in-depth analysis of these issues can contribute to developing more balanced profit-sharing and social responsibility mechanisms.

In 2023, about 200,000 people were employed in the field of subsoil use in Kazakhstan, which is a significant part of the economically active population. In addition, investments in infrastructure development in the mining regions amounted to about 450 billion tenge, including constructing roads, schools, and hospitals. This requires the development of policies aimed at minimizing negative effects and increasing positive impacts, including investments in infrastructure, education, and healthcare.

According to official data from the Ministry of Energy of the Republic of Kazakhstan, in 2023 the total volume of oil production amounted to 85.7 million tons, and natural gas production reached 55 billion cubic meters. Oil exports brought the country an income of 33 billion US dollars, which became the main source of foreign exchange earnings. In addition, tax revenues from subsurface user

companies amounted to 3.2 trillion tenge, which is 10% more than in the previous year. This confirms the importance of the extractive sector in ensuring macroeconomic stability and financing key government programs.

In 2023, more than 500 subsurface use licenses were issued in Kazakhstan, and the total volume of oil and gas production amounted to about 85 million tons. Tax revenues from subsurface users exceeded 3 trillion tenge, which underlines the importance of this sector for the country's economy. In addition, coal production amounted to about 110 million tons, which further strengthened the country's energy security and ensured export supplies to neighboring countries [14].

Conclusion

The constitutional model for determining the rights of subjects in the field of subsoil use in Kazakhstan is a key element of the legal system, playing an important role in the economic development of the country and the sustainable use of natural resources. Kazakhstan, possessing significant reserves of mineral resources, faces the need to effectively regulate relations in this area.

Firstly, it is important to delineate the powers between central and local authorities in the field of subsoil use in Kazakhstan. Legislation should provide a clear structure of responsibility, which will minimize conflicts of interest and ensure effective resource management. The Constitution of the Republic of Kazakhstan grants the state the right of ownership of subsoil but local authorities must have the necessary powers to control the use of natural resources, which helps to take into account the interests of local communities.

Countries such as the United States and Canada demonstrate that effective management of subsoil use is only possible with a clear structure of responsibilities and authorities. This includes both property rights and responsibilities related to environmental protection and social interests. An important point is also the recognition of the rights of local communities, which is becoming increasingly important in the context of global change and increasing environmental responsibility. This framework encompasses not only well-defined property rights but also the obligations tied to environmental protection and social interests. Crucially, the recognition of the rights of local communities is gaining prominence, reflecting a broader global shift toward inclusivity and accountability in resource governance. As environmental challenges become more pressing, the input and participation of local communities are essential for ensuring that subsoil use practices are sustainable and culturally appropriate. This involvement fosters a sense of ownership and stewardship among local populations, which can enhance compliance with regulations and promote conservation efforts.

Secondly, Kazakhstan needs to create legal mechanisms that ensure a balance between economic interests and environmental protection. Legislation should take into account the principles of sustainable development and social justice. Constitutional norms should guarantee the rights of residents and local communities so that they can participate in processes related to the use of mineral resources and protect their interests.

Thirdly, an important aspect is to ensure a mechanism for control and responsibility for compliance with legislation in the field of subsoil use. At the constitutional level, guarantees must be established that protect ecosystems and provide obligations for companies engaged in resource extraction. This includes both sanctions for environmental violations and obligations to restore disturbed lands.

In addition, civil society participation in the natural resource management process is becoming increasingly important in Kazakhstan. Public organizations and local communities should be involved in decision-making and monitoring compliance with regulations. The constitutional model should provide mechanisms for active citizen participation in monitoring and assessing the environmental impacts of companies' activities.

Modern challenges such as climate change and the need to transition to more sustainable energy sources require a rethinking of traditional approaches to natural resource management in Kazakhstan.

Constitutional norms must adapt to new realities to ensure a more flexible and sustainable subsoil management system capable of responding to changes in the global economy and the needs of society.

In conclusion, the constitutional model for determining the rights of entities in the field of subsoil use in Kazakhstan should be based on the principles of clarity, balance of interests, sustainable development, and participation of civil society. Only by observing these principles can we achieve effective and fair management of natural resources, which will contribute to the economic development of the country and improve the quality of life of the population. The integration of these aspects into the legal system will not only ensure sustainable use of the subsoil but also protect the rights of all participants in the process, including government agencies, businesses, and local communities.

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ЖЕР ҚОЙНАУЫН ПАЙДАЛАНУ САЛАСЫНДАҒЫ СУБЪЕКТІЛЕРДІҢ ҚҰҚЫҚТАРЫН АНЫҚТАУДЫҢ КОНСТИТУЦИАЛЫҚ МОДЕЛІ

Аңдатпа

Мақалада Қазақстандағы жер қойнауын пайдалану саласындағы субъектілердің құқықтарын айқындаудың Конституциялық моделі талданады. Қазақстан Республикасы Конституциясының жер қойнауын пайдалану мен қорғаудың құқықтық негіздерін, оның ішінде мемлекет пен жеке тұлғалардың құқықтарын қалыптастырудағы рөлі зерттелген. Табиғи ресурстарға қол жетімділікті реттейтін негізгі ережелер, сондай-ақ оларды қорғау тетіктері қарастырылған. Қазақстан Республикасы Конституциясының жер қойнауы ресурстарын пайдалану мен қорғаудың құқықтық базасын құрудағы, оның ішінде мемлекет үшін де, жеке тұлғалар үшін де құқықтарды бөлудегі шешуші рөліне мән беріледі. Мемлекеттік және жеке субъектілер арасындағы мүдделерді теңестіруге және экологиялық стандарттарды сақтау қажеттілігіне назар аударылады. Мақалада басқа елдердің озық тәжірибелері негізінде ықтимал кедергілерді Қазақстанда болдырмау және анықтау үшін салыстырмалы тәсілдер

арқылы талдайды. Сонымен қатар ол жергілікті қауымдастықтардың құқықтары мен мүдделерінің қорғалуын қамтамасыз ету үшін мүдделі тараптардың шешім қабылдау процестеріне белсенді қатысу қажеттілігін атап көрсетеді. Талдау нәтижесінде құқықтық реттеудің өзекті мәселелері анықталып, Қазақстанның табиғи ресурстарын орнықты және ұтымды пайдалануды қамтамасыз етуге бағытталған жер қойнауын пайдалану саласындағы заңнаманы жетілдіру бойынша ұсынымдар ұсынылды.

Негізгі сөздер: субъектілердің құқықтары, мемлекеттік реттеу, Конституция, жер қойнауын пайдалану, жеке мүдделер.

КОНСТИТУЦИОННАЯ МОДЕЛЬ ОПРЕДЕЛЕНИЯ ПРАВ СУБЪЕКТОВ В ОБЛАСТИ НЕДРОПОЛЬЗОВАНИЯ

Аннотация

В статье анализируется конституционная модель определения прав субъектов в сфере недропользования в Казахстане. Исследуется роль Конституции Республики Казахстан в формировании правовых основ использования и охраны недр, включая права государства и физических лиц. Рассмотрены основные положения, регулирующие доступ к природным ресурсам, а также механизмы их защиты. Также рассматривается ключевая роль Конституции Республики Казахстан в создании правовой базы для использования и охраны недр, включая разграничение прав как государства, так и отдельных лиц. Основное внимание уделяется балансу интересов государственных и частных структур и необходимости соблюдения экологических стандартов. Анализируются сравнительные подходы других стран для выявления передовой практики и потенциальных подводных камней, которых Казахстан мог бы избежать. Кроме того, подчеркивается необходимость более активного вовлечения заинтересованных сторон в процессы принятия решений для обеспечения надлежащего представительства и защиты прав и интересов местных сообществ. В результате проведенного анализа выявлены актуальные проблемы правового регулирования и предложены рекомендации по совершенствованию законодательства в сфере недропользования, направленные на обеспечение устойчивого и рационального использования природных ресурсов в Казахстане.

Ключевые слова: права субъектов, государственное регулирование, Конституция, недропользование, частные интересы.

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Information about authors:

Balzhan Zharmakhanbetova - **corresponding author**, PhD student, L.N. Gumilyov Eurasian National University, Astana, Republic of Kazakhstan

E-mail: balzhan.zh10@gmail.com

ORCID: <https://orcid.org/0000-0002-2997-7224>

Akmaral Saktaganova - PhD of the Department of “Legal Disciplines” of the A.K. Kussayinov Eurasian Humanities Institute, Astana, Republic of Kazakhstan

E-mail: aridnissakta.11@gmail.com

ORCID: <https://orcid.org/0009-0008-0457-7794>

Indira Saktaganova - candidate of legal sciences, associate professor, L.N. Gumilyov Eurasian National University, Astana, Republic of Kazakhstan

E-mail: aridnis@mail.ru

ORCID: <https://orcid.org/0000-0001-7218-197X>

Информация об авторах:

Балжан Жармаханбетова - **основной автор**, докторант, Евразийский национальный университет имени Л.Н. Гумилева, г. Астана, Республика Казахстан

E-mail: balzhan.zh10@gmail.com

ORCID: <https://orcid.org/0000-0002-2997-7224>

Акмарал Сактаганова – доктор PhD кафедры «Юридических дисциплин» Евразийского гуманитарного института имени А.К.Кусаинова, г. Астана, Республика Казахстан

E-mail: aridnissakta.11@gmail.com

ORCID: <https://orcid.org/0009-0008-0457-7794>

Индира Сактаганова - кандидат юридических наук, ассоциированный профессор, Евразийский национальный университет имени Л.Н. Гумилева, г. Астана, Республика Казахстан

E-mail: aridnis@mail.ru

ORCID: <https://orcid.org/0000-0001-7218-197X>

Авторлар туралы ақпарат:

Балжан Жармаханбетова - **негізгі автор**, Л.Н.Гумилев атындағы Еуразия ұлттық университеті докторанты, Астана қ., Қазақстан Республикасы

E-mail: balzhan.zh10@gmail.com

ORCID: <https://orcid.org/0000-0002-2997-7224>

Акмарал Сактаганова - А.К. Құсайынов атындағы Еуразия гуманитарлық институтының «Заң пәндері» кафедрасының PhD докторы, Астана қ., Қазақстан Республикасы

E-mail: aridnissakta.11@gmail.com

ORCID: <https://orcid.org/0009-0008-0457-7794>

Индира Сактаганова - Л.Н.Гумилев атындағы Еуразия ұлттық университетінің заң ғылымдарының кандидаты, қауымдастырылған профессор, Астана қ., Қазақстан Республикасы

E-mail: aridnis@mail.ru

ORCID: <https://orcid.org/0000-0001-7218-197X>