

**TO THE QUESTION CONCERNING
WATER LEGISLATION'S UNIFICATION:
COUNTRIES OF CENTRAL ASIA**

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ABSTRACT

Up to the Independence water relations in Central Asian Republics (CARs) and between them were regulated by "Bases of the Water legislation of the Union SSR and union republics" and national water legislation, which were issued according to the named "Bases...". The "Bases..." promoted the unifications of water legislation. Independence's declaration by the CARs (Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan) has caused necessity of processing of the water legislation. During 1993-1994 the Water Codes of Kazakhstan (31.03.1993) and Tajikistan (27.12.1993), the Laws of Uzbekistan "About water and water use" (06.05.1993) and Kyrgyzstan "About water" (14.01.1994) were accepted. The named above "sovereign" National Water Laws were prepared on an old pattern. Water Code of Turkmenistan (01.06.1973) remained working up to 2004. The new wave of national water legislation's development begins since 2000. Now the working Water Laws in CARs are the Water Code of Kazakhstan (is accepted 09.07.2003), Water Code of Kyrgyzstan (12.01.2005), Water Code of Tajikistan (29.11.2000), Code of Turkmenistan "About water" (01.11.2004), and the Law of Uzbekistan "About water and water use" (06.05.1993). The analysis shows that the national water legislation's development goes by different ways, and the measures its unification are not undertaken, though all countries of region deal with the same waters, in a context of management by them. This circumstance is one of obstacles by development of the international legal base of water resources management in Central Asia. Water legislation of the CARs requires unification, and the appropriate bases of the water legislation should be developed.

Keywords: "Central Asian Republics"; "National Water Legislation"; "Legislation's Unification".

INTRODUCTION

Currently, Integrated Water resources Management (IWRM) is being considered as a viable alternative to the conventional (administrative and technocratic) approach to water resources management. The institutional aspects of IWRM call for the following important considerations:

- ◆ Transition from water resources management (WRM) based on the administrative boundaries to one that is based on hydrographic (basin) boundaries;
- ◆ Transition from the narrowly departmental approach to a more systematic and integrated WRM;
- ◆ Water demand management rather than the conventional supply-side management;
- ◆ Implementation of a cooperative style WRM rather than the administrative command method;
- ◆ Replacement of non-transparent institutional structures by more transparent ones;
- ◆ Participation of stakeholders in WRM decisions and bottom up approach;

To implement the above-mentioned principles, appropriate decisions at various WM hierarchical levels need to be made and adequate political, legal, institutional, and financial mechanisms need to be developed. The necessary financial resources should be sought after to aid in creating favorable conditions for the IWRM.

The key elements necessary to promote and implement the IWRM have been identified by the Global Water Partnership (GWP) and are chiefly categorized as:

- ◆ Political support and decisions (in terms of water policies);
- ◆ Legal framework (water policies converted in a form of law);
- ◆ Financial and motivational aspects and structures (financial resources).

In present paper the problems of unification and perfection of the of Central Asian republics' water legislation are considered from positions of their practicality for support and implementation of the IWRM. Below, as a whole, these questions are considered concerning national water legislation.

CENTRAL ASIAN COUNTRIES' WATER LEGISLATION

Before Independence, water relations within and between the Central Asian Republics (CARs) were regulated by the "Bases of the Water legislation of the Union SSR and union republics" (hereinafter "Bases of... USSR") and the respective republican water acts. As a result, water legislation (WL) of all CARs was very similar since the "Bases of... USSR" placed limits for the republican lawmaking regarding water.

Establishment of the new independent states has called for a revision of the legal framework for WRM at the national and the interstate level. Most Central Asian States adopted new WL during 1993-1994, such as: Water Code of Kazakhstan (March 31, 1993); Water Code of Tajikistan (December 27, 1993); Law of Kyrgyzstan "About water" (January 14, 1994); Law of Uzbekistan "About water and water Use" (May 6, 1993). More recently, new versions of Water Codes were adopted by Tajikistan (November 29, 2000), Kazakhstan (July 9, 2003), Kyrgyzstan (January 01, 2005), and Turkmenistan (Code "About water", November 1, 2004). To the Law of Uzbekistan "About water and water use" some changes and additions were brought, and it has remained working. Below an analysis is carried out concerning the named above working "main" legal acts of WL of Uzbekistan (Law "About water and water use", 1993), Tajikistan (Water Code, 2000r.), Kazakhstan (Water Code, 2003), Turkmenistan (Code "About water", 2004), and Kyrgyzstan (Water Code, 2005), which we will unit under the common name "National Water Laws" (NWLs), for convenience of an analysis and statement. Search opportunities of perfection and unification of NWLs of the CARs in a context of realization of IWRM principles is the basic purpose of this analysis.

Existing water regulatory and legal framework of the CARs is generally composed of the following:

- ◆ Respective provisions in national Constitutions;
- ◆ Water Laws (as mentioned above);
- ◆ Respective provisions in Laws regulating "allied" relationships, such as land, forest, mountain, sensitive environment, etc;
- ◆ Decrees of Supreme State Authority;
- ◆ Declarations by the Heads of States (having the power of law in some cases) and/or the Government, Ministries, State Committees, and Departments;
- ◆ Decisions of local public authorities;
- ◆ Respective water-related provisions of civil, administrative, criminal and another legislations, and
- ◆ International Agreements in water relations' sphere.

Purposes and tasks of water legislation

Purposes and tasks of the WL - as the "purpose and tasks" (NWL of Kyrgyzstan, Article 1; NWL of Kazakhstan, Art.3), "tasks" (NWL of Tajikistan, Art. 1; NWL of Uzbekistan, Art. 1; NWL of Turkmenistan, Art. 1) - are determined in NWL of all CARs and as a whole are reduced to the water relations' regulation. At the same time, NWL of Kyrgyzstan and NWL of Kazakhstan determine a purpose of the NWL directly:

- ◆ “Present Code adjusts water relations in sphere of use, protection and development of water resources for guaranteed, sufficient and safe supply by water of the population..., protection of an environment and maintenance of rational development of water fund of republic” (NWL of Kyrgyzstan, Art. 1. Purpose and tasks);
- ◆ “Achievement and maintenance of ecologically safe and economically optimum of water use and water protection for preservation and improvement of vital conditions of population and environment are purposes of water legislation...” (NWL of Kazakhstan, Art.3. Purpose and tasks).

NWL of Tajikistan (Art.1. Tasks) and Turkmenistan (Art.1. Tasks) determine necessity of account the nature’s requirements to water as one of tasks of NWL. The rules about “to not damage to the natural objects” are available and in the NWL of Uzbekistan (so, Art.35. Water users’ duties). As a whole NWL of CARs have enough rules to some extent concerning environment’s protection. But it is represented essentially important, according to spirit of modern international environment law and international water law, the clause of the rights of a nature to water separately as one of the purposes of NWL, as it is made in NWL of Kazakhstan and Kyrgyzstan. In many cases it is difficult to separate a purpose and tasks from each other. At the same time, it is meaningful to stop on an opportunity of definition of any Law’s purpose as the “legal relations’ regulation” in this or that sphere. In our opinion, in most cases the terms “purpose” and “tasks” are mixed in NWL of CARs. As an example it is possible to consider the NWL of Kazakhstan:

“Art.3. Purposes and tasks of the water legislation of Republic of Kazakhstan:

- 1. Achievement and maintenance of ecologically safe and economically optimum of water use and water protection... are purposes of water legislation...”
- 2. Task of the water legislation of Republic of Kazakhstan:
- 1) Realization of state politics in the field of use and protection of water fund;
- 2) Regulation of the water relations;
- 3) Maintenance of a legal basis of support...;
- 4) Definition of the basic principles...;
- 5) Management of the relations in the field of use...”

Basically, situation that by purpose of the water legislation is water relations’ regulation is reflected in the NWL: “Water legislation... regulates relations in the field of use and protection of water fund, management of water fund and water-economy’s structures and other water relations (Art.10, part 1).

Similarly, in the NWL of Uzbekistan:

1. "Art. 1. Tasks of the water legislation of Republic of Uzbekistan:

- ◆ Tasks of the Law... are regulation of water relations, rational water use needs of the population..... in the field of the water relations".

As it is visible, purpose of WL ("regulation of water relations") actually has appeared as "tasks" of WL in the NWL of Kazakhstan and Uzbekistan. As against "task", "purpose"¹ is more common term therefore definition of the legislation's purpose is enough simple. The purpose of the NWLs of CARs is possible to formulate as "regulation of the water relations", and according to this purpose to describe tasks (rational water use, protection of waters etc.). The uniform format of the NWLs of CARs (in a part of the purpose's definition) can be given in the following edition: "Regulation of the water relations in (Republic of Kazakhstan, Kyrgyz Republic, Republic of Tajikistan, Turkmenistan, Republic of Uzbekistan,) is a purpose of the present Law (water legislation)".

Terminology of the water legislation

Analysis of the terminological device of the NWL of CARs shows that NWLs of Kazakhstan, Kyrgyzstan, Tajikistan, and Turkmenistan have the special articles (or attachment) devoted to this question: Water Code of Kazakhstan (Art.1 "The basic terms used in the present Code"), Water Code of Kyrgyzstan (Art.2. The basic terms and definitions used in the present Code), Water Code of Tajikistan (Art. 2 "Concepts and special terminology"), Code "About water" of Turkmenistan (Attachment "The basic terms and concepts" to the Code). NWL of Uzbekistan has no such article and gives definition of terms by way of their occurrence in the text of the Law. As a whole it concerns to the kinds of water use (common, joint, primary, secondary).

Comparison of the terminological device of NWL of the CARs shows that the significant quantitative and qualitative diversity of terms and their definitions is present. For example, Water Code of Kazakhstan has 52 terms, Water Code of Kyrgyzstan – 37, Water Code of Tajikistan – 29, Code of Turkmenistan "About water" – 17 terms, and their definitions. In particular, comparison the terminological device of the Water Codes of Tajikistan and Kazakhstan shows that they have 5 similar terms – "watershed area", "water consumer", "use of water objects", "protection of water objects", "waste water", however, and these common terms for the Water Codes of both countries are determined differently:

¹ PURPOSE - prediction in consciousness of result, on which achievement the actions are directed. ... P. directs and regulates actions... (Philosophical dictionary – Moscow, "Politizdat", 1986 - p.534)

Water Code of Republic of Tajikistan:

- ◆ “Watershed area - territory, the drain with which forms water object”;
- ◆ “Water consumer - physical or legal persons receiving... water for maintenance of the needs”;
- ◆ “Use of water objects - reception by various ways of benefit from water objects for satisfaction of material and other needs of the citizens and legal persons”;
- ◆ “Protection of water objects - activity directed on preservation and restoration of water objects”;
- ◆ “Waste water - water flowing down in water objects after its use or from the polluted territory”

Water Code of Republic of Kazakhstan:

- ◆ “Watershed area - territory, within the limits of which borders the water resources of water object are formed”;
- ◆ “Water consumer - physical or legal persons consuming water from water objects or using services of water management organizations and receiving water from systems of water supply”;
- ◆ “Use of water objects - extraction of useful natural properties of water objects for satisfaction of material or other needs of the physical and legal persons”;
- ◆ “Protection of water objects - activity directed on preservation, restoration and reproduction of water objects, and also on not admitting of harmful influence of waters”;
- ◆ “Waste water - waters, used or flowing down from polluted territory, reset in natural or artificial water objects or in relief, in the order established by the legislation of Republic of Kazakhstan”.

Here it is necessary to note that the Water Code of Kazakhstan from 1993, which had identical format with the working Water Code of Tajikistan, included only 3 common terms – “water (waters)”, “waste water”, “harmful influence of waters”, but they had different definitions also.

Now the NWLs of CARs have no any common term, which would be determined equally, though all states deal with use and consequences of use of the same water resources in the substantial plan.

To errors of the technical order, at presence of the separate list of used terms, it is necessary to relate:

- ◆ Repeated a definition of terms already given earlier separately. So, in the Water Code of Tajikistan: “common water use, “special water use” (Art.23), “primary water user” (Art.25) etc.;

- ◆ Additional introduction new terms and their definitions in the text. So, the Water Code of Kazakhstan: “water objects”, “water resources” (Art.5), “objects of water relations” (Art.11), “water objects of joint usage” (Art.17), “water objects of the detached usage” (Art.18), “water objects of the special state importance” (Art.20), “state account of superficial and ground waters” (Art.58), “state water cadastre” (Art.59), “state monitoring of water objects” (Art.60), “special water use” (Art.66), “primary water use”, “secondary water use” (Art.69), “water objects of improving purpose” (Art.93), “hydromelioration condominium” (Art.96), “pollution” (Art.113), “small water objects” (Art.121) etc. Similarly, in the Water Code of Kyrgyzstan: “The water resources management is a complex system of measures...”; “The basin approach means...; etc.

Unification of the NWL of CARs is expedient to begin from terminology. Not having agreed that means this or that term to speak about unification of the NWLs rather difficultly.

Property to water

In all CARs water is the state property:

- ◆ The NWL of Kazakhstan: “1. Water fund of Republic of Kazakhstan is an exclusive state ownership (Art.8. Right of property to water fund of Republic of Kazakhstan);
- ◆ The NWL of Kyrgyzstan: “Water resources of Kyrgyz Republic are the exclusive and not alienated state property...” (Art. 4. Property to water resources and water fund’s lands);
- ◆ The NWL of Tajikistan: “Water is the exclusive state property...” (Art.5. State ownership to waters”);
- ◆ The NWL of Turkmenistan: “State water fund of Turkmenistan is the extremely state property” (Art.4. State ownership to waters)
- ◆ The NWL of Uzbekistan: “Waters are a state ownership - national riches of Republic of Uzbekistan” (Art.3. State ownership to waters);

The NWL of all CARs forbids actions breaking the right of a state ownership to waters:

- ◆ The NWL of Kazakhstan: “Actions... breaking the right of state ownership to water objects are void...”. (Art.8. Right of property to water fund...);
- ◆ The NWL of Kyrgyzstan: “Bargains connected to the water relations and accomplished with infringement of the water legislation are considered void” (Art.92. Invalidity of the bargains ...”);
- ◆ The NWL of Tajikistan: “Actions... breaking... the state ownerships’ right to water the... are forbidden...” (Art.5. State ownership to waters), and also “

re-concession the right to water use and other bargains breaking in the direct or latent form the state ownerships' right to water admit void" (Art.141. Invalidation of the bargains breaking the right of a state ownership to water);

- ◆ The NWL of Turkmenistan: "Actions... breaking the right of a state ownership to waters, are forbidden" (Art.4. State ownership to waters).
- ◆ The NWL of Uzbekistan: "Re-concession of right to water use and other bargains... breaking the state right to waters are void" (Art.114. Invalidation of the bargains breaking the right of...).

The Law of Kyrgyzstan "About water" (1994), which has lost force in 2005, specially stipulated that "Water resources withdrawn... from water objects in established order, can make the property of the legal and physical persons and persons without citizenship" (Art.5. Property to the state water fund).

This rule is essential and under certain conditions could result in loss of the control by the state above a part of water resources. It is obvious, that the similar normative rule can be acceptable only for "national waters" and can not be applied to transboundary waters. Working Water Code of Kyrgyzstan has no such rule that it is necessary to recognize as an essential positive of WL. At the same time, the working Law of Kyrgyz Republic "About interstate use of water objects, water resources and water-economy structures of Kyrgyz Republic" (adopted in 2001) recognizes water as the economic goods. Some principles and rules of this Law, from which Kyrgyzstan "proceeds at realization of state politics in the field of use of river water resources formed in territory of Kyrgyz Republic" should discuss together with water specialists from other CARs, in particular – following rule:

- ◆ "Recognition of water as kind of natural resources having economic cost... and being the goods" (Art.3. Basic principles of cooperation in sphere of interstate water relations).

Not doing accent on contents of the term "property" concerning to water because this question is object for discussion, it is necessary to note that in Central Asia water and also the large rivers and large irrigation structure were the public property as a whole, and the management by them was centralized and did not leave from under the state control. In a number of cases and at more less difficult conditions (water within the limits of one country) the rules about public character of water resources is fixed in the WL of some states. So, in the Law "About the rivers of Japan" is underlined that "river is the public property", and "river water can not be subject of private law" (Art.2). The NWL of Brazil especially stipulates that "water is the public property" (Art.1). Though in the NWL of Philippines there is a concept "appropriation of water" but it is understood no more as "purchase the rights on

usage of water" (Art.9), and to private water is possible to relate unless "appropriation of water, which is transferred with help of vessels manually" (Art.14).

At conditions of market relations in special literature the terms "water's market", "water's purchase", "waters' sale" etc. are much used. Use instead of them the word collocations "market of right to water", "sale of rights to water", "purchase of rights to water" etc. will be by more correct from legal positions.

The question on property to water, water objects and water structure in trans-boundary context is directly connected to the questions of WRM at different levels. The problem of the property to trans-boundary waters (or to their part) should be decided by the interested parties by means of negotiation.

Priorities of water use

NWLs of CARs recognize as a main priority the "drinking and household needs of population" and that is absolute correct:

- ◆ The NWL of Kazakhstan: "Water legislation... is based on the following principles: ... 2) Prime maintenance of population by drinking water... (Art. 9. Principles of the water legislation...);
- ◆ The NWL of Kyrgyzstan: "Up to a confirmation of basin plan..., water use is carried out in view of the following priorities: "Use of water for drinking and household needs" (Art. 24. Priorities of water use);
- ◆ The NWL of Tajikistan: "Water objects are given in usage, first of all, for satisfaction of drinking and household needs of population" (Art.5. Priority granting of water objects for drinking and household needs...);
- ◆ The NWL of Turkmenistan: "Water objects are given in usage, first of all for satisfaction of drinking and household needs of the population" (Art.21. Prime granting of water objects for drinking and household needs of population);
- ◆ The NWL of Uzbekistan: "Water objects are given in usage, first of all, for satisfaction of drinking and household needs of population" (Art.114. Primary granting of water objects for needs of population).

At the same time, one of important aspects of WRM is sequence of water maintenance of irrigation. In this context, it is necessary to note implementation to the NWL of Kazakhstan of a remarkable rule of the Moslem Water Law (MWL): "If some of the owners cannot make use of the river other than putting a barrage across it and co-owners reach the agreement between themselves, then the turn to withdraw water for irrigation must start from downstream and proceed upstream...". This rule has found reflection for the first time in Central Asian region in the Water Code of Kazakhstan from 1993: "By granting waters to several users, interests of the down-located water users are satisfied first of all" (Art.30. Joint water use), and confirmed

in the working Water Code (from 2003): "At use of water objects of joint usage interests of down-located water users are satisfied first of all (Art.17. Water objects of joint usage).

It is necessary to note that lawmakers of Turkmenistan have found necessary to include this rule in the Code "About water" (2004): "By granting water objects to the several water users the interests of water users are taken into account, who is located in downstream of rivers and channels" (Art.21. Prime granting of water objects for drinking and household needs of the population). NWLs of other CARs have no such rule.

Importance of introduction of this fundamental rule of MWL in the NWL of all CARs and in practice of WRM is difficult to overestimate. Probably, it is a unique way, which will allow essentially improve the water maintenance of downstream of rivers and irrigation channels, is especial – for low-water years. Picture became chronic, when down-located water users receive less the confirmed water limits. This injustice carries artificial character and takes place at all water management's levels. Having a place over-expenditure of water in the top part of rivers and irrigation systems, and as a consequence, in a number of cases - thriftless use of water resources and the abusing at their account can be cardinally reduced, if this MWL-principle will be implement in practice of the water relations at local, national and regional levels.

Payment for the right to the water use (for irrigation)

Rule concerning payment for water use about is present in the NWLs of all CARs.

The NWL of Kyrgyz Republic most full describes kinds and mechanisms of payment for water use:

- ◆ "Payment under the contract on delivery of water", "Payment for usage by water as for a natural resource..." (Art.2); "Water resources management is based on the following principles: Principle of economic value of water resources ... (Art.6); "Each sanction on water use contains the following general requirements...: to pay all charges connected to distribution of the sanction on water use (Art. 25); "Administrative payment for distribution, change, prolongation and registration of the sanctions on water use, including the special sanctions on water use...; Size of an administrative payment for distribution, change, prolongation and registration of the sanctions on water use (Art.31); "Payment for delivery of additional water volumes" (Art.37); "Supplier can stop delivery of water, if water user... not bring in a payment" (Art.39); "Sizes of payment for services of the water supplier..." (Art. 40), etc.;

Not describing detail reflection in the NWLs of CARs of questions concerning paid water use, it is possible to note that on completeness of a statement they settle down in the following order (conditionally): the NWL of Kyrgyzstan, NWL of Kazakhstan, NWL of Tajikistan, NWL of Uzbekistan, and NWL of Turkmenistan. As a whole, the questions of paid water use occupy from a chapter in the NWLs of Kyrgyzstan (Chapter 5. Water use on a basis of the contract on water delivery) and Kazakhstan (Chapt.28. Economic methods of water use's regulation), up to article in the NWLs of Tajikistan (Art.31. Economic conditions of granting of water objects for usage) and Turkmenistan (Art.29. Payments for water) and a part of article in the NWL of Uzbekistan (part 4 and 5 Art.30. Limited water use). No matter what is the considered provision on water use charge called ("water charges", "economic methods of water use regulation", or "free water use"), its substance as a whole, compared to the "Bases of... USSR", has not changed. In CARs, common water use is carried out on an unpaid basis, special water use - on a paid basis, there are privileges on payments for separate categories of water users. Though CARs in their NWLs devote different volumes to paid water use, the water and other legislations of all CARs allow to transit to paid water use in the agricultural sector. The process of transition to paid water use goes in different ways in each CAR, has its specific character. There are also common problems in this field, but it is subject of separate consideration.

The right and duties of water users

As a whole, according to the water and other legislation of CARs, water users have the rather wide rights. But in this matter also there are some problems "of technical character from legal positions".

The comparative analysis shows that as the inheritance from "Bases of... USSR" in the NWLs of CARs there was some mess between the rights and duties.

For example, water users have the right:

- ◆ "To use water objects in those purposes, for which they are given by the sanction on special water use" (The NWL, Art.42. Use of water objects on appointment);
- ◆ "To use water objects only in those purposes, for which they are given" (The NWL of Uzbekistan, Art.32. The rights of water users).

For comparison it is possible to result also following legislative rules, according to which the right of water users to water use is stopped:

- ◆ "Use of water object not with the purposes for which it is given" (The NWL of Tajikistan, Art. 49. Bases of a termination of the right on water use);
- ◆ "Use of water object not according to that purpose for which he is given" (Law of Republic of Uzbekistan "About water and water use", Art.36. Bases of a termination of the right to water use).

Comparison of the rights and duties of water users and also bases of the termination of the right of water users to water use shows that the rule about necessity "water use on a special-purpose designation" is a duty of water users, instead of their right. Division between the rights and duties is rather important in the legal relation. The basic difference of a duty from the right consists that by the right it is possible to use or to refuse it. For use of the valid right in order, established by the legislation, the sanction is not necessary. It is necessary to refuse imaginary multiplication of the rights that takes place in a number of the Laws.

In the certain degree the following moments are lacks of the water legislation in a part of protection of the water users' rights (below the legislative rules can be resulted as examples):

a) About "other" duties of water users:

- ◆ Water users are obliged: "To carry out other requirements stipulated by the legislation... and in the licenses on special water use (The NWL of Tajikistan, Art.45. Duties of water users);

б) About "other" bases, on which the rights of water users can be stopped or are limited:

- ◆ "The Law can provide and other bases for termination of the water use's rights" (The NWL of Tajikistan, Art..49. The bases for termination of the water use's rights");
- ◆ "The rights of water users can are limited with the purposes of protection of health of the population, in other state interests, and also in interests of others water users" (The NWL of Uzbekistan, Art.34. Restriction of the water users' rights);
- ◆ "Legislation can be stipulate and other bases of the termination of the water use's right" (The NWL of Uzbekistan, Art.36. Bases of a termination of the water use's rights).

Stated above fairly and concerning the bases of the responsibility for infringements of the NWL. In particular, "Bases of... USSR" had a rule: "By the Legislation of Union SSR and allied republics can be established the responsibility and for other kinds of infringements of the water legislation" (Art. 46. Responsibility for infringement...). This rule is reproduced in the NWL of CARs, in this or other edition (without change of the contents, edition concerns unless by "point"): the NWL of Kyr-

gyzstan (Art.90. Responsibility for infringement of the water legislation...: "Persons who have broken the water legislation carry criminal, administrative and other responsibility according to the legislation of Kyrgyz Republic); "Legislation... can establish the responsibility and for other kinds of infringements of the water legislation" (the NWL of Tajikistan, Art.142.Responsibility for infringement of the water legislation: "By legislation... can be established the responsibility and for other kinds of infringement of the water legislation"); (the NWL of Uzbekistan, Art.115. The responsibility for infringement of the water legislation: "By legislation can be established the responsibility and for other kinds of infringements of the water legislation") etc.

In each case the NWLs have rather wide list of infringements, for which water users can be involved in the responsibility, but not complete; it is necessary to recognize as essential lack of the NWLs of CARs, in a part of protection of the water users' rights. In a context of modern view on civil society's building, equality of the water relations' subjects, only their rights can to be interpreted widely, but not their duties.

As the default of the requirements of the NWLs entails punishment, their list should be settling and is specified in the NWL. Otherwise these "other bases" (the discontinuance or restrictions of the water use's right) at lower level - at drawing up the normative acts by Ministries, State Committees and Departments, Decisions of local authority can be interpreted is free, create ground for a various sort of official abusing and do not promote strengthening of legality in sphere of the water relations.

Hydrographic (basin) principle in WRM

The river flow is formed and dispersed, depending on various natural and anthropogenic factors. As water does not recognize political and administrative boundaries within the countries, unified management of all factors affecting the volume and quality of water resources is best feasible and practical within a watershed area or an irrigation system; i.e., on the basis of hydro-boundary principle. In fact, a river basin may belong to a different jurisdiction (e.g. state or federal unit). However, it is advisable to concentrate WRM aspects of the river basin into the hands of one authority. The basin principle embodies the holistic principle of WRM.

Understanding of necessity and political support of transition to the basin (hydrographic) principle of WRM is present in all CARs, but a degree of readiness (the legal base etc.) for it has some distinctions.

In Kazakhstan and Kyrgyzstan the basin principle of WRM is fixed in them NWLs.

In Uzbekistan transition to the basin principle of WRM has a political basis and appropriate normative-legal base. According to the Decree of the President of Uzbekistan dated March 03, 2003, #3226 "On Major Directions for Intensification of Agricultural Reforms" and the Enactment of the Cabinet of Ministers #320 of July 21, 2003, "On Improvement of Water Management", the administrative-territorial management of irrigation systems was shifted to basin-based management. New institutional structures - Basin Authorities for Irrigation Systems - were established at the Ministry of Agriculture and Water Resources.

In the NWLs of Tajikistan and Turkmenistan transition to the basin principle directly is not stipulated, but there is a number of the projects on transition to the basin principle of WRM, and an experience of WRM on basin principle. In particular, in Tajikistan, in a context of transition on a hydrographic principle of WRM, the creation of Basin Water Organizations for the basic rivers is provided, in Turkmenistan WRM of Garagum-Darya (the former Karakum canal, which is the largest water object of Turkmenistan and has a complex water infrastructure) is carried out by a hydrographic (basin) principle.

In CARs, in a context of transition to the basin principle of WRM, significant problems are not present. At the same time, the following problems at transition to basin water management require the appropriate decision, including their legal regulation, though in a various degree in different CARs:

- ◆ Coordination of interests the basic economy sectors in the river basin. In a number of river basins there are organizations, which do not submit directly neither local (municipal) authorities, nor basin water organizations (for example, enterprises of republican submission);
- ◆ Division of authority and responsibility between basin water organizations and local (municipal) authorities in sphere of water relations. For example, water organizations answer only for water delivery, and local (municipal) authorities – for a final product from water, and also – for population's health and many other questions, connected to water use;
- ◆ Absence of water quality management. Now questions of WRM are limited by management of water quantity, as a whole.
- ◆ - Weak improvement of economic mechanisms of water use, especially – for irrigation, at presence concerning good legal base.
- ◆ Trans-boundary aspects of transition to the basin WRM. As a rule, it is a consequence of significant distinctions in the NWLs legislation of CARs on various problems of the water relations.

Public participation in WRM

Public participation in WRM is one of major elements of IWRM, as water, in comparison with other kinds of natural resources, has higher social value. Public participation is called to create an atmosphere of a transparency and openness of the accepted decisions on WRM with the purposes for reduction of the decisions' risk, which not answering by public interests. Public participation is provided with creation in organizational structure of WRM the appropriate public institutes.

In CARs the organizational structure of WRM on a vertical provides hierarchies (in decreasing order of authorities):

- ◆ National level: Main Water Agency (Kazakhstan: Committee for Water Resources within the Ministry of Agriculture; Kyrgyzstan: Department of a Water Economy of the Ministry of Agricultural, Water Economy and Process Industry; Tajikistan: Ministry of Melioration and Water Resources; Turkmenistan: Ministry of Water Resources; Uzbekistan: Central Administration of Water Resources at the Ministry of Agriculture;
- ◆ Basin level: Basin Water Organizations (Kazakhstan, Kyrgyzstan, Tajikistan: Basin Water Management Administrations; Uzbekistan: Basin Administration of Irrigation Systems; and Turkmenistan, where WRM carry out on administrative/territorial principle, as a whole: Water Management Administration;
- ◆ Sub-basin level: Administration of local water systems (irrigation /main channels etc);
- ◆ Inter-district and district levels (inter-district and district Water Management Administrations;
- ◆ Local level: agricultural and other enterprises-water users: shirkat, farm, private, rent sectors;

Each water management level provides public participation in the form:

- ◆ - National level: National Water Councils;
- ◆ - Basin level: Basin Water Councils;
- ◆ - Sub-basin level: Water Committees, Water Commissions;
- ◆ - Inter-district, district and local levels: Water Users Associations (WUAs) or other public associations.

In particular, the Laws about WUAs in Kazakhstan and Kyrgyzstan are accepted, in Uzbekistan and Tajikistan the Draft of similar Laws are developed.

Each CAR has legislation on public associations, connected to the order of public associations' creation, their functioning and discontinuance of their activity. All questions connected to the activity of public associations in the water relations' sphere,

should meet the requirements of appropriate Law. Therefore absence of Laws about WUAs in Tajikistan, Turkmenistan and Uzbekistan is not an obstacle for creation and functioning of the public associations in the water relations' sphere in these countries.

The basic lack of the working Laws about WUAs (Kazakhstan and Kyrgyzstan) and developed Draft of Laws about WUAs (Tajikistan and Uzbekistan) is that circumstance that they have for an object of regulation only water relations in an agricultural sector.

CONCLUSION

Analysis shows that in the CARs there are legal bases of transition to the IWRM, but at a level of the Law they are fixed only in Kazakhstan and Kyrgyzstan. Water and other (land, environment) legislation of Kazakhstan and Kyrgyzstan is the most advanced among CARs. Main problems in Kazakhstan and Kyrgyzstan relate to the difficulties with enforcing the law and broadly adopting the IWRM.

In Uzbekistan, basically, water, land and other national legislation allow an implementation of the IWRM principles. Nevertheless, amendments and/or supplements, as well as new regulatory acts are needed for successful implementation of the IWRM. In particular, this relates to a development of economic instruments to promote rapid reforms in all water sub-sectors and improved organization of public involvement in water management decision. The basic problems in Uzbekistan relate to the enforcement of the legal and additional regulatory acts for process' acceleration to IWRM principles' introduction. The similar problems to introduction of IWRM principles are available in Tajikistan.

In Turkmenistan the relevant water/land legislation needs to be improved to provide a more solid basis for the necessary elements of the institutional framework, so that the IWRM could be implemented. Initially, it would be important to do a lot of promotional work, starting with seeking an approval of the IWRM by the public and obtaining support from policy makers to make changes in the management of water resources.

Above some questions of perfection and unification of the NWLs of CARs are above considered. Practically all of them relate to the IWRM-implementation in practice of water management (fastening of the rights of nature to water as purposes or tasks of the NWL, questions of the property to water, paid water use, the rights and duties of water users, water use's priorities etc).

Tasks of the present analysis do not include consideration of other aspects of NWLs (language of the law, technical aspects of the laws' composition, legitimacy of

use of those or other terms and definitions and exception of their double interpretation, terminology as a whole, necessity of use of standard words and expressions by development of the laws' drafts, parity of rules of the NWLs with the appropriate rules of other Laws regulating relations connected to the water relations: land, environment; etc.).

The comparison NWLs of CARs and their structure shows that in the whole negative inheritance of old remained, and the attempts of entering of essentially new rules were reduced, basically, to dissociation and overlapping of sections, chapters, articles, parts, items of the old Water Laws. In the greater degree it concerns to the NWLs of Uzbekistan and Turkmenistan. Now only the NWL of Kazakhstan and Kyrgyzstan most full has incorporated normative rules, which directly adequate practically all principles of IWRM. Substantially it is explained by "fresh" dates of their coming into force (2003, 2005). Substantially it is explained by "fresh" dates of their coming into force (2005r). At the same time the years can be required that many normative rules these NWLs begin "to work really". In particular, it concerns creation of the appropriate organizational structures, introduction of a payment for water as for a natural resource etc.

Named above "Bases of... USSR" was really base, within the framework of which was carried out lawmaking in all republics, and it is necessary to recognize as their main advantage. Similar "Bases..." could be developed for CARs that substantially would order process of lawmaking in sphere of the water relations in region and would promote of the water legislation's harmonization and unification.

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