

PART II

LEGAL SITUATION IN THE REPUBLIC OF KAZAKHSTAN



ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS.

Based on the materials of the judicial practice of the
Ecological Society Green Salvation
in 2014—beginning of 2017

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Access to justice is one of the main legal principles allowing every person to protect their right on the environment favourable for health and wellbeing. Without the opportunity to be defended, the rights cannot be implemented and are only left on paper.

1. Legal Violations Disputed in Courts

In its practice, Ecological Society Green Salvation (hereafter—ES) constantly faces a slighting attitude of the state authorities and business towards the “public interests.”¹ Even the official mass media informs about numerous violations of the human rights on the environment favourable for health and wellbeing. National and international official reports, presentations, and researches confirm the seriousness of the situation.

For the three years that passed after the Fifth Meeting of the Parties of the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (hereafter—the Aarhus Convention), the organization disputed in courts the following violations of the law:

- non-observance of the provisions about protection of rare and threatened species of plants;
- failure of the local executive authorities to establish protection zones along the borders of specially protected natural territories;
- failure of the Ministry of Culture and Sports to provide control over utilization and protection of sites of historical and cultural heritage, including the UNESCO World Heritage site;
- conducting the state environmental assessments with violations of the legislative requirements;

- inaction of the state authority in liquidation of illegal dump sites;
- application of inactive normative legal acts as a legal base for preparation of Environmental Impact Assessment (hereafter—EIA);
- violation of the public right to receive timely, full and reliable environmental information from the state organs;
- ungrounded refusals of state organs over requests to provide open information about sanitary and protection zones of polluting enterprises.

In our opinion, the main violators remain to be the state organs² responsible for decision-making, conducting of environmental assessments, issuing permits, licenses, control over compliance of laws, distribution of information, and suppression of legal violations by pre-judicial and judicial methods. Of course, the fact that the lower level officials are under pressure of the higher level leadership and large business cannot be discounted. Corruption paralyzed practically the whole state apparatus which is rapidly losing its ability to manage the country effectively.³

The most noticeable change that happened during the last period is the character of the legal violations. They became far more evident and severe. There is an impression that many officials and businessmen came to completely believe in powerlessness of the law and their own impunity. Using the growing legal chaos, the violators file lawsuits against citizens who are protecting their interests.

2. Filing Statements

Process of addressing a court starts with filing of a statement, and already at this stage, the organs of justice create obstacles without despising violations of the law. Language of the denials and reasons for returning the statements noticeably changed. If earlier, the public right to address the court was often disputed itself, and bureaucratic delays always occurred because of determination of the jurisdiction, in 2015-2016, other procedural impediments started to appear more often.

In 2015-2016, 9 statements filed by the ES were not accepted from the first time. Some of the statements had to be re-filed two or three times. The main reasons for the returns and denials were:

- unpaid state fee, even though in all cases, the ES addressed the court in defence of rights, freedoms, and lawful interests of local residents, undefined number of people, and the state. In order to accelerate the process for accepting the documents, the ES had to pay the state fee (4 statements);⁴
- case is not subjected to be reviewed and resolved in the order of a civil proceeding; in violation of the paragraph 4 of the Article 151 of the Civil Procedural Code (hereafter—CPC), the court did not indicate which organ the ES need to address to in the given case (2 statements);
- disputed material “does not cause legal consequences for the claimant” (1 statement).

Violated: paragraphs 2 and 3 of the Article 9 of the Aarhus Convention; paragraph 2 of the Article 8 of the Civil Procedural Code; subparagraph 1-1) of the paragraph 1 of the Article 14 of the Environmental Code; paragraph 10) of the Article 541 of the Code of the Republic of Kazakhstan “About Taxes and Other Obligatory Payments to the Budget.”

In 2015-2016, as a result of illegal actions of the courts of the first instance, the ES had to address Almaty City Court three times with private complaints. As a result, majority of the ES statements were accepted, but the process of filing a statement took several months, instead of five days stipulated by the paragraph 1 of the Article 150 of the CPC.

3. Statements Reviewing Process

During statements reviewing process, the organization faces numerous violations of the norms of material and procedural law on the part of the judges. Defendants from the state organs often treat the claimants and the court disrespectfully. Non-appearance to a court without a justified reason is a common practice which drags the process and creates obstacles for the work of the organization.

During reviewing of the statements, impartiality of the judges is often doubted. Some of them instead of a uniform application of the laws call upon patriotic feelings of the claimants and give unprofessional subjective evaluation to the actions of the ES. For example, in 2016, during review of one of the cases, the ES submitted a statement about recusation of the judge. The chairman of the court did not satisfy the statement, but the judge withdrew himself. The thing is that earlier, he violated the norms of the material and procedural law twice, and did not accept the statement of the organization to be reviewed. The Almaty City Court admitted the violations and cancelled both of his determinations.

Paragraph 2 of the Article 54 of the CPC requires obligatory participation of a prosecutor in civil proceedings for cases related to the state and public interests.⁵ But prosecutors often are not present at the hearings. Their opinions are not always announced before a decision is taken. Generally, prosecutors do not conduct a “control over observance of rights and freedoms of a human and citizen, lawful interests of juridical persons and the state,”⁶ and uniform application of laws. Often, they take the side of the violators. In the ES’s experience for the past two years, there was not a single case when a prosecutor supported demands in defence of interests of undefined number of people or the state.

According to the paragraphs 1 and 2, Article 1 of the CPC, the order of civil proceedings is defined not only by the national legislation, but also by the norms of the international law. International treaties and other obligations of Kazakhstan, regulatory resolutions of the Supreme Court “are components of the civil procedural law.”

Practice shows that when reviewing a case, judges do not study statements of the ES about ignoring of the norms of international treaties by the state organs

violating paragraphs 1 and 2 of the Article 1, paragraph 1 of the Article 6 of the CPC. Unqualified prosecution of processes by judges is one of the reasons why unlawful decisions are made.

Review process of some cases is dragged on for years.

4. Analysis of Court Decisions and Appeal Instance Rulings

Out of 7 lawsuits of the ES which were accepted and reviewed in 2016, courts denied satisfying demands in 6 cases. On January 25, 2017, a petition of the ES on one of the cases was satisfied by the Supreme Court Judicial Board and forwarded to the court of the first instance for a review starting from the stage of the case acceptance. The main reasons for denials are: ignoring of requirement of international nature protection conventions, interpretation of laws by courts at their own will, application of inactive normative legal acts, bad knowledge of materials on the cases, going outside the scope of lawsuits demands.

4.1. Courts of the First Instance Do Not Apply the Norms of the International Nature Protection Treaties

Courts do not take into consideration the international nature protection treaties, despite of the fact that practically in all lawsuits, the organization references provisions of the conventions ratified by the Republic of Kazakhstan. Courts of the first instance ignore the norms of the paragraph 3 of the Article 4 of the Constitution, paragraph 3 of the Article 2 of the CPC, paragraph 2 of the Article 2 of the Environmental Code, paragraph 3 of the Article 1 of the Forestry Code, paragraph 4 of Article 2 of the law “About Specially Protected Natural Territories,” and other normative legal acts. In all of them, it is stated that ratified international treaties have a priority over the laws of Kazakhstan. For the past three years, courts of the first instance and equalled to them courts haven’t applied the norms of the international conventions at all during making their decisions on the ES’s lawsuits.

On March 11, 2016, the Specialized Inter-Regional Economic Court of the City of Almaty (hereafter—SIEC) denied the ES in satisfying lawsuit demands. Documents presented to the court proving the arguments about banning of clear-cutting and sanitary cutting of plants listed in the Red Book of Kazakhstan were not studied by the court and were not given an appropriate evaluation.

The court did not take into consideration the norms of the Convention on Biological Diversity. Its decision doesn’t even mention that Kazakhstan undertook international obligations in preservation of biological diversity including protection of the plants listed in the Red Book, in accordance with the Convention. The judge ignored the fact that according to the law, not only the plants, but also the territory where they are growing must be protected.⁷ During review of this case, the court violated the principle of the course of law.

According to the paragraph 1 of the Article 6 of the CPC: “During reviewing and resolving of civil cases, a court must accurately follow the requirements of the Constitution of the Republic of Kazakhstan, constitutional laws of the Republic of Kazakhstan, the present Code, other regulations, applicable international agreements of the Republic of Kazakhstan.”

The judge also violated the regulatory resolution of the Supreme Court “About Application of the Norms of the International Agreements of the Republic of Kazakhstan” which indicates that “...incorrect application of the norms of international agreements of the Republic of Kazakhstan by a court can be a basis for cancellation or alteration of a judicial act. Incorrect application of a norm of an international agreement can be expressed in courts’ failure to apply norms of applicable international agreements, or in application of norms of inapplicable international agreements, or incorrect interpretation of norms of international agreements.”⁸

On November 6, 2015, the SIEC of the city of Almaty denied the ES in satisfying the demands about acknowledging the conclusion of the State Environmental Assessment on the materials of the EIA for the project of construction of an autoroad to the mountain ski resort “Kokzhailau” to be illegal.⁹ The court did not base its decision neither on the paragraph 1 of the Article 58 of the Environmental Code (hereafter—EC), nor on the paragraphs 2 and 3 of the Article 9 of the Aarhus Convention.

To put it mildly, this is surprising, since in the regulatory resolution of the Supreme Court dated on November 25, 2016, it is clearly stated: “Disagreements in implementation of the SEA [State Environmental Assessment] are reviewed by negotiations or in court (Article 58 of the EC). When reviewing such cases, courts must follow the environmental legislation, provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.”¹⁰

In 2016, similar violations were committed by the courts of the first instance when reviewing all lawsuits of the ES.

4.2. Judges Interpret the Legislation at Their Own Will

Random interpretation and application of a law during implementation of a legal proceeding became a widely used practice and one of the main reasons for making unlawful decisions. Such decisions were repeatedly made by the courts on the ES’s lawsuits.

For example, during reviewing of the above mentioned case about construction of an autoroad to the mountain ski resort “Kokzhailau,”¹¹ the judge decided that the lands of a specially protected natural territory of the state-wide level fall under the “Rules of Maintenance and Protection of Vegetation of the City of Almaty.” He “based” his decision on the fact that

part of the national park is within the administrative borders of the city.¹² The judge of the Appellate Board of the Almaty City Court came to the same conclusion.¹³ The courts interpreted at their own will the paragraph 55 of the indicated Rules, which states that the Rules do not apply to specially protected natural territories of the state-wide level. Besides, the judge allowed a random interpretation of the paragraph 6 of the Article 108 of the Land Code. The latter states that “inclusion of land plots into limits of a city, town, or village, does not terminate property right or right of land use over these plots.” None of the judges was troubled by the fact that the city authorities do not have a right to interfere into the activity of a specially protected natural territory of the state-wide level.

During reviewing of the case about acknowledging to be illegal of the EIA for the project of construction of an autoroad to the mountain ski resort “Kokzhailau,”¹⁴ the judge denied to satisfy the lawsuit demands. Firstly, he referred to a similar case which supposedly has been reviewed earlier.¹⁵ By making such a conclusion, the judge severely violated the requirements of the paragraph 4 of the Article 15 of the CPC, which states: “While staying unbiased and impartial, a court conducts the process, creates necessary conditions for realization of the parties’ procedural rights on full and objective study of circumstances of a given case.” Thus, the judge interpreted at his own will the purposes of the two different documents—the EIA and the conclusion of the state environmental assessment.

Secondly, he did not study the proofs presented by the claimants referring to the conclusions of the state environmental assessment performed with severe violations of the legislation. In other words, the EIA is conducted correctly because it is confirmed by the state assessment, and the state assessment is correct because it is confirmed by the court!

Thirdly, in a very contradictory form, however, the judge made an attempt to explain that “the EIA stipulates measures for minimization of negative consequences of the project realization!” In other words, he admitted its negative consequences.

Fourthly, the question about the fact that the experts approved clear-cutting of the plants listed in the Red Book was left without consideration. During the court hearings, the defendants could not explain which law allows their cutting.

4.3. Application of Inactive Regulatory Acts, Poor Study of Cases

Careless review of statements from the public and poor study of case materials became a common practice in courts. On the other hand, the courts are very uncritical towards the proofs presented by state officials which allow the latter to intentionally mislead the courts.

For example, the organization addressed a court with a statement about acknowledging the materials of inventory and forest pathology examination of

vegetation prepared with violation of the legislation to be illegal.¹⁶ When the defendants worked on these materials, they used a regulatory act which did not have a juridical force in the territory of the national park, and guideline which was not a regulatory act of the Republic of Kazakhstan. This document was used in two other cases which were reviewed on the statements of the ES.¹⁷ But neither the judges, not prosecutors did not express any objection against these so called “legal bases.”

Another example demonstrates how the courts at all costs “cover” the state organs even when irrefutable proofs are presented. A court was reviewing a lawsuit of the ES about providing of unreliable information about construction of cable road on the territory of a national park by the Forestry and Wildlife Committee. In violation of the Article 65 and part 2 of the Article 218 of the CPC, the judge did not consider the proofs referred to by the ES. He based his denial on expired documents of 1994, which became inactive more than 20 years ago, due to foundation of Ile-Alatau National Park (Decree of the Government dated on February 22, 1996, No.228). As a result, the Committee still did not provide reliable information. An absurd situation occurred. Territory where the illegal construction took place, in the court’s opinion, was not included into the park. While according to the Decree of the Government, land acts and maps, it is territory of the national park. Moreover, this is a reserved zone. Who if not the proprietor of the constructed facility is benefiting from such a position of the court?

Appellate Board of the Astana City Court also expressed a slighting attitude towards the arguments of the ES. Additional proofs provided by the organization were not taken into consideration.¹⁸

A few words shall be mentioned about incorrect preparation of the documentation of the court decisions as well.

On December 21, 2015, a judge admitted inaction of an official (mayor) who for several years did not take measures on liquidation of an illegal dumpsite on an abandoned land plot.¹⁹ But in violation of the paragraph 1 of the Article 227 of the CPC, the judge:

- did not indicate in the decision “which laws do these actions (inactions) contradict, and the deadline for implementation of the court’s decision”;
- did not oblige “the authority and governmental official to liquidate in full extent the allowed violation and recover the violated rights, freedoms, and lawful interests of a citizen.”

In this regard, the ES filed an appeal demanding to oblige the akim to restore the order.

Referring to the untruthful information provided by the akim who stated that the demands of the residents in liquidation of the dumpsite were met in the full extent, the judges of the Appellate Board made a decision about denial of the complaint.

As a result, the local executive organs still did not liquidate the dumpsite.

5. Reviewing Cases in the Supreme Court

The same violations as in the courts of the lower instances are practically taking place in the Supreme Court. Judges not always study thoroughly cases materials. Often, they blindly copy the decisions of the courts of the first instance. This leads to absurd situations which diminish their authority and create doubts in their competence.

For example, on June 27, 2016, a judge of the Supreme Court after a preliminary review of a petition of the ES on the lawsuit about acknowledging the conclusion of the State Environmental Assessment on the materials of the “Environmental Impact Assessment” for the project of “Construction of an Autoroad to the Mountain Ski Resort “Kokzhailau” to be illegal and about its cancellation, denied forwarding it for a revision to a cassation instance of the Supreme Court.

The judge extremely poorly studied the case’s materials. He even did not understand that it is a question of a planned clear-cutting of plants listed in the Red Book, and not about performed cuttings. In the determination, he wrote: “Clear-cutting of the vegetation was performed by the Republican State Authority ‘Ile-Alatau State National Natural Park’ on the basis of the received permits.” Even though, the documents presented to the court indicate multiple times that, firstly, nobody issued permits to clear-cut the Red Book plants. Secondly, in accordance with the legislation, no state organ has a right to issue such permits. And thirdly, no clear-cutting has been performed yet in the national park.²⁰

In violation of the Article 72 and paragraph 1 of the Article 224 of the CPC, the judge did not review the proofs referred to by the ES regarding the lack of authorities in all state organs of the Republic of Kazakhstan to clear-cut or remove (сhoc) the Red Book plants.

When reviewing other petitions of the ES, judges did not apply the norms of the international conventions and regulatory resolutions of the Supreme Court which emphasize the priority of the international agreements.

On November 14, 2016, during a preliminary review of the petition about acknowledging the material of inventory and forest pathology examination of vegetation to be illegal and about its cancellation,²¹ a judge of the Supreme Court repeated the argumentation of the SIEC of the city of Almaty. He stated that “the disputed material does not cause legal consequences for the claimant.”²² In its petition, the ES clearly justified its arguments based on the provisions of the paragraph 5 of the Article 2, paragraphs 2 and 3 of the Article 9 of the Aarhus Convention. They state that public organizations have right to defend interests of undefined number of people. This right is also stipulated in the Article 14 of the Environmental Code. But the judge intentionally or due to a lack of professionalism, ignored these norms and created obstacles for access

to justice. As a result, the ES was not able to dispute in the court the obviously illegal document, which became a basis for an important decision of the state authorities.

A similar situation occurred with the above mentioned case about cancellation of the conclusion of the state environmental assessment on the materials of the EIA for the construction of an autoroad to the mountain ski resort.²³ In the lawsuit, appeal, petition, and during the court hearings, the ES emphasized multiple times that Kazakhstan signed the Convention on Biological Diversity which regulated relations in protection of Red Book plants and the territory where they grow. Judge of the Supreme Court did not say a word about the Convention, did not apply its provisions, but indicated in the determination that there were no violations of material and procedural law on the case.²⁴

On June 27, 2016, the Supreme Court Civil Affairs Board preliminary reviewed a petition of the ES. It was related to inaction of the Ministry of Culture and Sports which did not take necessary measures for protection of a site of the world heritage—Talgar site of ancient settlement.²⁵ The Board denied satisfying the petition, even without mentioning a word about the Convention Concerning the Protection of the World Cultural and Natural Heritage.

Earlier, March 21-23, 2016, a mission of the International Council on Monuments and Sites (hereafter—ICOMOS) visited the country by an official request of the Republic of Kazakhstan. The mission admitted violation of a number of requirements of the World Heritage Convention. The mission noted that it was necessary to strengthen the control over implementation of the law “About Protection and Utilization of Sites of Historical and Cultural Heritage,” bring it in compliance with the terminology and mechanisms of the Convention. Besides, it is necessary to strengthen the mechanism of compliance with the Convention in the country, introduce changes to the Land Code, in order to prevent destruction of monuments.²⁶ In July 2016, the conclusions of the ICOMOS mission were included into the decision of the 40th session of the World Heritage Committee.²⁷ This confirmed correctness of the ES’s position.

In the regulatory resolution of the Supreme Court No.1 dated on January 15, 2016, it is said: “Implementing the indicated constitutional powers, the Supreme Court ensures uniform interpretation and application of the law during civil proceedings.”²⁸ But practice shows that the Supreme Court judges themselves not always interpret and apply laws uniformly.

Besides, practice of preliminary reviewing in the Supreme Court clearly demonstrates its unreasonableness. Case outcome depends on competency of a single judge,²⁹ which is a practical obstacle to just and unbiased court proceedings.

From 2014 to beginning 2017, nine petitions of the ES which were based on the Aarhus Convention, Convention on Biological Diversity, and World

Heritage Convention were denied as a result of a preliminary case reviewing by the Supreme Court. Thus, the Supreme Court judges violated regulatory resolutions No.1 dated on July 10, 2008, “About Application of the Norms of International Agreements of the Republic of Kazakhstan” and No.1 dated on January 15, 2016, “About the Right to Access Justice and Powers of the Supreme Court of the Republic of Kazakhstan in Reviewing Judicial Acts.”

6. Execution of Court Decisions and Judgments

According to the paragraph 2 of the Article 21 of the CPC, “judicial acts that came into legal force... are obligatory for all state organs, local governments, juridical persons, authorities, citizens, and are subjected to execution on the whole territory of the Republic of Kazakhstan.

Practice shows that judicial acts that came into legal force are not always implemented, and often it is specifically state organs and authorities who fail to execute court judgments. A lot of efforts are needed to ensure execution of even the Supreme Court judgments.

For example, the Supreme Court Supervisory Board’s judgment dated on November 27, 2013, is still not executed. The judgments were made based on a lawsuit from the public about inaction of the Director of the Department of Sanitary and Epidemiological Control in the City of Almaty. He did not provide control over on-site marking of sanitary and protection zones with special signs.³⁰

On October 3, 2014, due to failure to execute the judgment mentioned above, the claimants filed a lawsuit about inaction of the officer of the court of the Department of Judicial Acts Enforcement of the City of Almaty. During the court hearings, the Department representative admitted the allowed violations. On December 24, 2014, a judgment about renewal of the enforcement proceeding was made. But in 2015, the judgment was still not executed. Moreover, on May 16, 2016, the court officer made another judgment about termination of the enforcement proceeding.

In this regard, on August 3, 2016, by a statement from the claimants, the Supreme Court Supervisory Board made a new determination. It states that the Director of the Department “as an authority—head of a juridical entity” is assigned for the control over on-site marking of the sanitary protection zones.³¹ Based on the Supreme Court determination dated on August 3, 2016, an enforcement proceeding was initiated again, but is still not executed.³²

Another example strikes by its absurdity. The case about inaction of an akim who for several years did not undertake measures to liquidate an illegal dumpsite on an abandoned lot was already mentioned above. The case was reviewed in the Supreme Court twice.

On October 20, 2011, the Supreme Court Supervisory Board denied satisfying the claimants’ petition by which it has “admitted the rights” of the

dumpsite for unlimited existence and disturbance of the local residents! On June 13, 2016, for the second time, the Supreme Court Board “confirmed the rights” of the dumpsite and the right of the akim to be inactive.

Since however, the court of the first instance acknowledged the inaction of the akim, the ES filed letters to the judge on July 31 and August 13, 2016, with a request to issue a writ of execution. The ES demanded to oblige the state organ to eliminate the “allowed violation and recover the violated rights, freedoms, and lawful interests of the citizens” in accordance with the paragraph 1 of the Article 227 of the CPC. The writ of execution still hasn’t been issued. After an inquiry of the ES to the local authorities, the latter promised to liquidate the dumpsite in spring 2017.

The lawsuit about the dumpsite of a size of a volleyball court lasts for over six years!

7. Legal Consequences of Illegal Decisions and Judgments of the Courts

Studying protocols of court hearings, decisions, and judgments allows determining with a high level of accuracy which parties are interested in obtaining illegal court acts.

For example, during court hearings on the ES lawsuit about inaction of the Ministry of Culture and Sports which did not ensure security of the world heritage site,³³ it became clear that the state organs didn’t even try to stop the construction by the judicial methods. This resulted in destruction of the southern part of the ancient settlement. Question about the status of the land where the site is located is still not clear.³⁴ Destruction of such monuments is a criminal liability, but neither the authorized organs, nor the prosecutor’s office have intents to sue the guilty. Real benefit from the occurred situation was received by the companies implementing the state order on construction of the road which is financed from the state and local budgets. Due to cancellation of the previous project, additional funds will be allocated for developing and construction of a new road bypassing the ancient settlement. Owners of the residential houses built right next to the ancient settlement benefited as well, because of the significant increase in the land prices in the area.

The mechanism of the state order was used in the case with the mountain ski resort “Kokzhailau” as well. Practicability of its construction is being discussed for many years already. According to the official data, only by November 2015, project development and preparation to the construction took 8 billion tenge from the budget.³⁵ In doing so, a threat of destruction of plants listed in the Red Book appeared in the area of construction of a road to the future resort. But courts of all levels with their decisions practically made it legal to cut those plants. Courts and the prosecutor’s office turned blind eyes on the factual preparation to a criminal violation.

The example of the project of construction to the mountain ski resort clearly demonstrates the mechanism of adopting illegal decision. The initiator of the project is the Akimat (the Mayor's Office). "Pocket" LLC makes a conclusion based on inactive legislation. Based on that, another LLC develops an EIA, formal public hearings are held. Department of Natural Resources (subdivision of the Akimat) conducts the state assessment. And finally, the Department of Architecture and Urban Planning (subdivision of the Akimat) approves the project. The court finds the illegal conclusion of the environmental assessment to be legal and the Department of the Natural Resources bypassing the law can issue a permit to cut the Red Book plants. After that, the known principle comes to force: well, since it is already built, let it stay. All violators are happy!

In the both cases, the winning party is the corrupted officials, commercial structures interested in receiving the state order, land owners who wish to expand their properties at the expense of the state lands which haven't been privatized yet, and criminal structures. They cover themselves by talking about important social projects: creating jobs, development of tourism, care of the disabled. But, in fact, they do not care about public interests, destruction of cultural monuments, non-restorable damage to the nature, and harm to people's health.

Due of the "influence" of the interested groups, efforts of public organizations in judicial defence of the interests of undefined number of people and the state meet an open resistance from the courts and prosecutor's office. Public representatives are oppressed and discriminated by deprivation from realization of their right on judicial defence. Thus, not only the norms of the national legislation are violated, but also the requirements of the paragraph 8 of the Article 3 of the Aarhus Convention and the Article 26 of the International Covenant on Civil and Political Rights.³⁶ Courts impede public associations to follow the obligations in protection of the environment stipulated in the subparagraph 1, paragraph 2, Article 14 of the Environmental Code.

Dependence of courts on the organs of the local executive power is quite obvious and clear. Unofficially, authorities set a goal for the courts to protect them from any, even the most insignificant, accusations in a lack of competence and corruption, provide them with impunity and permissiveness. As a result, efficiency of work of the courts is decreasing, and even the simplest cases turn into long proceedings. The Supreme Court reviews cases which could have been resolved on the local level without addressing to the organs of justice. The snow ball of petty cases and unimplemented court decisions grows, while the violators feel themselves quite comfortable and more and more boldly trample upon the law.

Thus, the court decisions lead to legalization of activity which contradicts to international agreements and national legislation; create conditions for new and

more serious violations of human rights on favourable environment; contribute to increase of social tension and deterioration of ecological safety; growth of corruption; impede development of environmental democracy; disrupt trust to the state organs, and undermine international reputation of the country.

- 1 Law of the Republic of Kazakhstan “About Architecture, Urban Planning, and Construction Activity in the Republic of Kazakhstan” (with the amendments as of April 7, 2016), subparagraph 2, paragraph 1, Article 3: “Public interests—interests of population of specific regions, cities, towns, villages, and other settlements in ensuring favourable living (staying) conditions on the territory, improvement of ecological situation, prevention of dangerous (harmful) impacts as a result of economic or other activities, infrastructure development of the settlements and their vicinities, preservation of the sites of historical and cultural heritage, and natural values.”
- 2 In 2015-2016, the following entities were brought to trial as defendants:
 - Department of Passenger Transportation and Autoroads of the City of Almaty;
 - Forestry and Wildlife Committee of the Ministry of Agriculture;
 - Department of Natural Resources and Nature Management of the City of Almaty (2 lawsuits);
 - Ministry of Culture and Sports of the Republic of Kazakhstan;
 - Akimat of the City of Almaty (2 lawsuits);
 - Consumer Rights Protection Department of the City of Almaty (1 new lawsuit and 1 failure to execute a court decision).
- 3 Corruption Perceptions Index 2015: Indicators for Kazakhstan Stay the Same, <http://tikazakhstan.org/indeks-vopriyatiya-korrupsiy-2015-pokazateli-kazahstana-ostayutsya-prezhnimi> (last visited November 18, 2016).
People and Corruption: Kazakhstan (Barometer of the World Corruption—2016), <http://tikazakhstan.org/lyudi-i-korrupsiya-kazakhstan-barometr-mirovoj-korrupsiy-2016/> (last visited November 18, 2016).
- 4 Appealing these court judgments about state fee payment could last for several months. These cases were lost, therefore, the state fee was not returned.
- 5 Civil Procedural Code of the Republic of Kazakhstan (with amendments as of April 6, 2016), paragraph 4, Article 54.
- 6 Law of the Republic of Kazakhstan “About the Prosecutor’s Office” (with amendments as of April 6, 2016), paragraph 4, Article 4.
- 7 2016. Case No.1 about acknowledging of the EIA on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal in the part of preservation of Red Book plants and about its cancellation (See the case No.7, 2015), http://esgrs.org/?page_id=11726.
- 8 Regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated on July 10, 2008, No.1 “About Application of the Norms of the International Agreements of the Republic of Kazakhstan” (with amendments as of December 30, 2011), paragraph 10, <http://sud.gov.kz/rus/legislation/CAT01/79691/2008> (last visited November 29, 2016).
- 9 2016. Case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
- 10 Regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated on November 25, 2016, No.8 “About Some Questions of Application of the Environmental Legislation of the Republic of Kazakhstan by the Courts on Civil Cases,” paragraph 16, <http://sud.gov.kz/rus/legislation/CAT01/79693/2016> (last visited December 21, 2016).
- 11 2016. Case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project

- “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
- 12 Decision of the SIEC of the city of Almaty No.2-16009/2015 dated on November 6, 2015.
 - 13 Statement of the Appeal Board of the Almaty City Court No.2A-8416/2015 dated on December 28, 2015.
 - 14 2016. Case No.1 about acknowledging of the EIA on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal in the part of preservation of Red Book plants and about its cancellation (See the case No.7, 2015), http://esgrs.org/?page_id=11726.
 - 15 Decision of the SIEC of the city of Almaty dated on March 11, 2016. The judge referred to the case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
 - 16 2016. Case No.7 about acknowledging to be illegal and cancellation of the “Material of Inventory and Forest Pathology Examination of Vegetation” prepared by “K...” LLC with violation of the legislation of the Republic of Kazakhstan, http://esgrs.org/?page_id=11726.
 - 17 2016. Cases No.1 and No.3.
 - 18 2016. Case No.2 about providing of inauthentic environmental information about construction of a cable road on the territory of a national park by the Forestry and Wildlife Committee (See the case No.8, 2015), http://esgrs.org/?page_id=11726.
 - 19 2016. Case No.6 about inaction of an organ of state administration which lead to a serious deterioration of ecological situation in the village of Besagash and violation of the citizens’ rights on favourable environment (See cases No.8, 2010; No.2, 2011; No.13, 2015), http://esgrs.org/?page_id=11726.
 - 20 2016. Case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
 - 21 2016. Case No.7 about acknowledging to be illegal and cancellation of the “Material of Inventory and Forest Pathology Examination of Vegetation” prepared by “K...” LLC with violation of the legislation of the Republic of Kazakhstan, http://esgrs.org/?page_id=11726.
 - 22 Ruling of the Judicial Board of the Supreme Court No.3r-10191-16 dated on November 14, 2016.
 - 23 2016. Case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
 - 24 Ruling of the Judicial Board of the Supreme Court No.3r-9967(2)-16 dated on November 14, 2016.
 - 25 2016. Case No.4 about inaction of a state organ in controlling of observance of legislation in the area of protection and utilization of historical and cultural sites, namely, in regard of Talgar ancient settlement (See the case No.11, 2015), http://esgrs.org/?page_id=11726.
 - 26 Report on the ICOMOS Advisory Mission to Kazakhstan. The Talgar component (S 01-KZ-01) within the serial World Heritage property Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China, Kazakhstan, Kyrgyzstan) (C 1442). 20 to 28 March 2016, pp.26-29, <http://whc.unesco.org/en/list/1442/documents>.
 - 27 Decision: 40 COM 7B.34 Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China / Kazakhstan / Kyrgyzstan) (C 1442), <http://whc.unesco.org/en/decisions/6699/>, (last visited September 2, 2016).
 - 28 Regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated on January 15, 2016, No.1 “About the Right of Access to Justice and Direct Authorities of the Supreme Court of the Republic of Kazakhstan in Reviewing Judicial Acts,” <http://sud.gov.kz/rus/legislation/CAT01/79691/2016>.

- 29 CPC, Article 443.
- 30 2016. Section No.2. Implementation of court decisions. Case No.1 Ruling of the Supervisory Board of the Supreme Court dated on November 27, 2013, on the lawsuit about inaction of a Director of a Department of the Committee of State Sanitary and Epidemiological Control in the City of Almaty which expressed in a lack of control over on-site marking of sanitary and protection zones with special signs (See the case No.9, 2012, and the case No.4, 2013), http://esgrs.org/?page_id=11726.
- 31 Supreme Court Civil Affairs Judicial Board Ruling dated on August 3, 2016. Section No.2. Implementation of court decisions. Case No.1, http://esgrs.org/?page_id=11726.
- 32 For more detail, please, see the material about implementation of this ruling prepared by the local residents, available in this digest: “Enforcement Proceedings of the Supreme Court Ruling,” p.68.
- 33 2016. Case No.4 about inaction of a state organ in controlling of observance of legislation in the area of protection and utilization of historical and cultural sites, namely, in regard of Talgar ancient settlement (See the case No.11, 2015), http://esgrs.org/?page_id=11726.
For more detail, please, see the material available in this digest: “Site of Ancient Settlement Talgar—the World Heritage Is in Danger!”, p.22.
- 34 State of conservation report the Republic of Kazakhstan “Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (Kazakhstan, China, Kyrgyzstan): the Talgar, Koilyk, Karamergen, Aktobe, Kulan, Kostobe, Ornek sites and the Akyrtas archaeological complex (Kazakhstan territory).”—Astana, 2017, <http://whc.unesco.org/en/list/1442/documents/>, pp.6-10.
- 35 8 billion tenge are already spent on the project of mountain ski complex “Kokzhailau,” <http://esgrs.org/wp-content/uploads/2015/12/letter7078-akimat-KJ.pdf>.
- 36 International Covenant on Civil and Political Rights (New York, December 16, 1966). Ratified by the Law of the Republic of Kazakhstan dated on November 28, 2005, No.91-III. Entered into force for the Republic of Kazakhstan on April 24, 2006. “Article 26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”