

ENFORCEMENT PROCEEDINGS OF THE SUPREME COURT RULING

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On October 17, 2012, several Almaty residents supported by the Ecological Society Green Salvation applied to the court defending their interests and right to live in a favourable environment. Despite of the fact that the Supreme Court ruled in their favour, the ruling has not been implemented, as for the date of publication of this material. One of the participants of the events tells a story about how plaintiffs seek enforcement of the court decision.

For many years, as a result of inactivity and connivance of Almaty officials, we live in buffer zones of a railway and motorway, on a territory of sanitary protection zones (hereinafter—SPZ) of several private industrial enterprises and a cemetery. Our houses are located in close proximity to production facilities that pose a threat to our lives and health. A cement plant that receives, unloads, and manufactures cement products is located on the east side of the residential houses and is the main polluter of the environment.

According to a conclusion of the state environmental assessment dated on February 27, 2007: “The territory of the plant is surrounded by industrial enterprises in all directions, except for the west. Railway tracks are located to the west followed by residential houses. The nearest residential houses are located at a distance of 40 meters from the border of the industrial site in the south-west direction... Class of the sanitary risk ... —class III with a radius of the regulatory sanitary protection zone of 300 meters. The residential houses are located on the territory of the regulatory SPZ.”

In 2011, the environmental situation became significantly worse as a result of reconstruction and expansion of Bokeykhanov Street, the street where we live. The intensity of traffic increased, and new heavy diesel locomotives appeared on the railway, the level of vibration increased significantly. This led to formation of numerous cracks on walls and foundations of our houses.

Appeal to the city akim (mayor) about our discrimination by the place of residence and violation of our rights to favourable and healthy environment was not heard. If the authorities were in compliance with the law, we would have long been resettled in another district.

In 2006, the Medeu District Court, and in 2009, the Bostandyk District Court recognized all conclusions of the state environmental assessment as being legal. Consequently, the size of the plant’s sanitary protection zone of 300 meters was also legally recognized. However, the state bodies did not make sure that

the sanitary protection zone was properly organized, that its requirements are closely observed, and that its borders are marked on site with special signs. Sanitary protection zones of other enterprises were not marked on site either.

In this regard, we appealed to the Department of Sanitary and Epidemiological Control in the City of Almaty with a request to show us the special signs on site denoting the boundaries of the sanitary protection zones and buffers. In the absence of the signs, we asked the Director of the Department to monitor their installation by the owners of these facilities. We reminded him that according to the paragraph 1 of the Article 121 of the Land Code, sanitary protection zones and buffers are established: “In order to ensure safety of the population and create necessary conditions for operation of industrial, transportation, and other types of facilities.”

On September 14, 2012, we received a response. In essence, it said that control over marking of sanitary protection zones with special signs on site is not a responsibility of the Department. Therefore, we were denied an access to information. We regarded such an answer as inaction of the official and appealed to a court.

The lawsuit lasted more than a year. On November 27, 2013, the supervisory board of the Supreme Court adopted a ruling recognizing the failure to monitor the layout and marking of sanitary protection zones on site to be inaction of the Director of the Department. He was ordered to monitor and provide the claimants with documents reflecting the location of their homes and the boundaries of the sanitary protection zones.

The resolution noted that state authorities are obliged to provide timely, complete, and reliable information, in accordance with the national legislation and the Article 4 of the Aarhus Convention.

2014

On January 6, based on the above mentioned Supreme Court ruling, a writ of enforcement was issued. The debtor for this case was the Director of the Department of Sanitary and Epidemiological Control of the City of Almaty.

On January 23, executive proceedings were instituted for No.02/1691, No.02/1692 on the basis of the executive document No.2-7091/12 of January 6, 2014, issued by the Medeu District Court.

On January 25, the executive proceedings were transferred to the bailiff K....

On February 12, a complaint was filed to the Prosecutor’s Office of Medeu District in connection with the inaction of the court bailiffs of the Courts Administrator of the City of Almaty. On February 15, we received a response that our complaint was sent to the Prosecutor’s Office of Almaty. Also, we were informed that a special group was created at the city prosecutor’s office to monitor the executive proceeding.

On February 12, a complaint about the bailiff's inaction was filed to the Supreme Court's Judicial Administration Committee. On March 5, the Committee sent it to the Head of the Department for Judicial Acts Enforcement of the City of Almaty. On March 18, a reply was received. It said that the Department will consider the complaint. In case of disagreement with the Department's decision, we were suggested to apply to a court.

On April 23, we filed a complaint again to the Prosecutor of the City of Almaty. The complaint was about inaction of the bailiff K... and the Head of the Section for Enforcement of Non-property Related Obligations. No answer was received.

On April 23, we filed another complaint to the Department for Judicial Acts Enforcement. On May 19, we received a reply signed by the Deputy Head of the Department. It informed us that an official check is being carried out regarding the inaction of the bailiff and the Head of the Section.

Our appeal of April 23 sent through the websites of the General Prosecutor's Office and the Ministry of Justice, was followed by a reply signed by the Deputy Head of the Department on June 25. The bailiff K... was instructed to take measures for enforcement of the ruling of the Supreme Court.

However, when we got acquainted with the materials of the executive proceedings, we found out that it was terminated back in April 24, 2014. We were not aware of this until September 25, 2014, when we received a copy of the resolution on its termination. This decision was made with a number of severe violations of norms of the material and procedural law:

- there was no legal basis for termination of the executive proceedings;
- the resolution was not properly approved;
- we were not properly notified within the time period established by law.

On October 31, we filed a complaint to the Medeu District Court on recognizing the actions of the bailiff K... to be illegal and cancellation of the resolution on termination of the executive proceedings dated on April 24, 2014.

During the court hearings, a representative of the Department for Consumer Rights Protection (before August 2014, known as the Department of Sanitary and Epidemiological Control of the City of Almaty), being a debtor in this case, persistently requested the court to keep the decision of the bailiff in force.

Based on reliable and sufficient evidence provided by us, the court found that the actions of the bailiff were illegal. A representative of the Department for Judicial Acts Enforcement (hereinafter—the Department

for Enforcement), agreed with the findings of the court and withdrew the decision on termination of the executive proceedings.

On November 3, the Medeu District Court issued a ruling to cease the proceeding, since the Department for Enforcement admitted its unlawful actions and withdrew the decision.

On October 28, the Department for Enforcement cancelled the decision of the bailiff K... on termination of the proceedings dated on April 24, 2014, and re-initiated the executive proceedings.

On November 19, the Head of the Department for Enforcement was sent a complaint about inaction of the bailiff K... for not issuing a copy of the resolution about re-initiation of the executive proceedings and did not respond to the written request.

On December 8, the Head of the Department for Enforcement was sent another complaint about inaction of the bailiff K..., who did not respond to our complaint dated on November 19.

Due to the failure to enforce the court decision and failure to answer our complaints filed to the Department for Enforcement dated on November 19 and December 8, we appealed to the Prosecutor of the City of Almaty again. On December 29, we received a reply signed by the senior assistant to the Prosecutor of the City of Almaty. It said that our appeal was sent to the Department for Judicial Acts Enforcement with instructions to take measures to enforce the judicial act.

2015

On February 3, we met with the Director of the Department for Consumer Rights Protection and asked to explain how he intends to implement the Supreme Court ruling.

On February 3, we filed the bailiff with a statement about limitation of the defendant's travel outside of the Republic of Kazakhstan.

On February 9, the Medeu District Court authorized the decision of the bailiff to temporarily limit the Department Director's travel outside of Kazakhstan.

On February 27, we filed a statement to the bailiff with a demand to collect fines from the debtor due to the failure to implement the Supreme Court ruling for 61 days.

On March 12, the bailiff filed the statement to the Medeu District Court to collect the fines. On March 26, the court refused to satisfy the statement. The court explained the refusal by the fact that the bailiff, allegedly, did not specify a deadline for implementation, although the law on enforcement proceedings requires immediate implementation of a court ruling.

On May 12, we provided the Department for Consumer Rights Protection with a detailed list of 11 enterprises with their full names and addresses; our homes are located in the sanitary protection and buffer zones of these

enterprises. We asked to provide mapping materials with marking the zones in the global positioning system.

On June 12, a similar list was submitted to the Department for Enforcement.

On July 28, we filed complaints to the Main Transport Prosecutor's Office with a request to suspend the work of the railway near our land plots. On August 7, we received a response that complaints will be reviewed.

On July 28, we filed a complaint to the Almaty City Prosecutor's Office against the inaction of the Director of the Department for Consumer Rights Protection.

On August 7, not having received an answer from the city prosecutor's office, and due to a failure to implement the Supreme Court's ruling, we filed a complaint against the inaction of the Department for Consumer Rights Protection addressed to the Prosecutor General. On August 26, we received a response from the Almaty City Prosecutor's Office that the Director of the Department was brought to administrative responsibility on August 20 and fined.

On October 27, a statement was submitted to the Supreme Court regarding the malicious incompliance with the Supreme Court's ruling. On November 6, the Supreme Court notified us that our statement was sent to the Ministry of Justice and the General Prosecutor's Office.

On November 24, after the Ministry of Justice reacted to our statement, the bailiff K... filed the statement to the Medeu District Department of Internal Affairs to bring the Director of the Department for Consumer Rights Protection to criminal liability. The basis is the failure to comply with a judicial act, which came into a legal force, for more than six months, Article 430 of the Criminal Code. We were officially notified about this by a letter signed by the acting Head of the Department of Justice of the City of Almaty.

Since the transfer of the materials of the enforcement proceedings to the Medeu District Department of Internal Affairs, it was basically stopped. Medeu District Department of Internal Affairs ceased the pre-trial investigation several times, allegedly, due to a lack of corpus delicti in the actions of the Director of the Department. We appealed the decisions to terminate the pre-trial investigation with the district prosecutor's office, which abolished them.

Finally, the pre-trial investigation was transferred to the Department of Internal Affairs of the City of Almaty (hereinafter—DIA). Later, the pre-trial investigation was terminated again with consent of the Almaty City Prosecutor's Office.

In December, we met with the acting Director of the Department for Consumer Rights Protection. He promised that the court ruling would be implemented no later than January 2016.

2016

On May 16, while the case was in the DIA, the bailiff issued a statement about termination of the enforcement proceedings again, this time justifying it

by retirement of the Director of the Department for Consumer Rights Protection. Article 47 of the law “On Enforcement Proceedings and the Status of Bailiffs” does not provide for termination of enforcement proceedings due to retirement of a defendant. Therefore, we filed a statement to the Medeu District Court to cancel the decision of the bailiff because of the illegality of his actions. The court refused to satisfy the statement. We filed an appeal to the civil affairs board of the Almaty City Court. Simultaneously, a statement was filed with the Supreme Court with a request to clarify the procedure for implementation of the Supreme Court ruling of November 27, 2013.

On August 3, the supervisory board of the Supreme Court issued a ruling. It stated that control over marking of the sanitary protection zones on site was assigned to the Director of the Department for Consumer Rights Protection “as an official representative—head of a legal entity.” He is also required to provide the plaintiffs with documentation reflecting location of their homes and the boundaries of the sanitary protection zones.

On September 12, on the basis of the Supreme Court ruling of August 3, the appeal board of the Almaty City Court cancelled the decision of the Medeu District Court and issued a resolution restoring the enforcement proceedings. The decision of the bailiff K... dated on May 16, 2016, about termination of the enforcement proceedings was cancelled.

On December 27, the bailiff handed the resolution demanding implementation of the Supreme Court ruling of November 27, 2013 to a representative of the Department for Consumer Rights Protection and listed the Department in the Unified Register of Debtors in Enforcement Proceedings.

2017

On February 24, the Department for Consumer Rights Protection filed a statement to the Medeu District Court to appeal the actions of the bailiff K.... The Department requested that the enforcement proceedings be terminated, allegedly, due to the fact that it fulfilled all the claims of the plaintiffs.

On April 4, the judge of the Medeu District Court refused to satisfy the statement, pointing out that there were no grounds for terminating the enforcement proceedings.

On May 3, the Department filed an appeal with the civil affairs board of the Almaty City Court.

Our story is a clear example of how difficult it is to have a court decision to be implemented, even if the decision is made by the Supreme Court.

ENVIRONMENTAL CODE. 10 YEARS OF CONTRADICTIONS AND INEFFICIENCY

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Ten years ago in January 2007, the Environmental Code of the Republic of Kazakhstan was adopted. The nature protection officials insisted on its development. “The Environmental Code is a set of laws that will reflect all aspects related to environmental protection,” explained the vice minister of environmental protection. It was planned to reform environmental legislation, to bring it closer to the environmental standards of the European Community and international legal standards.¹

With such serious intentions, it was necessary to carefully study all aspects of environmental law, including international law. And such work should have taken a very long time. It should have also been taken into account that in 1997, environmental legislation was already reformed and good laws were adopted, practical implementation of which, in fact, has just begun.

But, alas! The Draft Environmental Code was presented for a review of the Majilis of the Parliament, in accordance with the Government Resolution No.567 dated on June 21, 2006.² Already on June 23, the Draft was introduced to the Majilis. And six months later it came into force! It was adopted hastily; it seemed like the law developers were mainly guided by a rush to report on time. As a result, it turned out to be another inadequate regulatory legal act, which only created a smokescreen that covers the legal chaos reigning in the sphere of environmental protection.

However, in the victorious reports in the first years after adoption of the Code, the opposite was asserted. “The Environmental Code of the Republic of Kazakhstan, adopted on January 9, 2007, introduces significant changes to the environmental protection system adopted in Kazakhstan. The administrative and command approaches, the old system of rationing, the priority of penal sanctions shall be replaced by effective economic levers that are a powerful factor in regulating economic activity in the use and protection of natural resources, prevention of environmental violations, and stimulation of introduction of new technologies. The Environmental Code defines the legal framework for state policy in the field of environmental protection, ensuring a balanced solution