

## Incompliance with the Aarhus Convention and Discrimination

This material is prepared by residents of one of the streets of the city of Almaty who fight for more than ten years already for their right to live in a favorable environment. During this time, they had to go through all levels of jurisdiction. In 2004, they submitted a statement to the Aarhus Convention Compliance Committee (ACCC/C/2004/06). The decision was made in their favor. But numerous obstacles for access to justice still exist. State officials and businessmen continue to “surprise” people with new tricks.

The described area represents a territory of 50 m wide and one kilometer long. There are several private houses on this territory which are located within nine (!) sanitary and protection zones of different industrial enterprises and other facilities. The problem can be solved very easily, if the law was strictly followed. The people, simply, need to be resettled away from the sanitary and protection zones!

This is what the residents of Bokeykhanov Street tell themselves about their problems and their struggle.

“Our houses are located in an ecologically unfavorable district of the city of Almaty, and we are constantly faced with numerous problems created by our “neighbors.”

For example:

1. Plant specializing in unloading, storage, and sale of cement in bags and in bulk (capacity – 18 silo towers) – functions without observation of a sanitary and protection zone (SPZ). At the present time, the plant operates on the basis of permits on natural resources utilization (Environmental Impact Assessment – EIA) issued to the previous owner. This is a violation of the law.
2. Construction of a plant on production of non-alcohol drinks is being conducted without project design estimates, permits, and observation of the SPZ.
3. Railway branch lines serving to more than 30 industrial enterprises are in a private property. They function without observation of the SPZ, without EIA, and without consideration of opinion of the local population.
4. Widening of the traffic area of Bokeykhanov Street conducted in 2011 significantly worsened the quality of life of the population and ecological conditions. The widening was performed without public participation in the decision-making process and without consideration of the public opinion. There is no sanitary buffer zone, technical characteristics of the traffic area and sidewalks do not meet the requirements of the Constructional Norms and Rules.
5. Asphalt plant (20 Serikova Street) functions without observation of the SPZ since 1967. As for the moment, the previous EIA expired, no new

EIA project was presented to the residents, no public hearings were conducted during the whole history of the plant operation.

6. Asphalt plant (55 Bokeykhanov Street) functions without observation of the SPZ. Sanitary and epidemiological services (SES) admitted that the plant operates with violation of sanitary norms and rules. But environmental services of the city think that the ecological norms are being met. But the enterprise does not have a project of EIA, and public opinion was not considered.

7. Municipal cemetery. Exists from the 1960s. No SPZ exists. At the present time, the cemetery is being added new graves, i.e. the cemetery is active.

8. Auto-service and oil change station (99 Bokeykhanov Street) are located at a minimal distance from residential houses and utility constructions. They do not meet fire safety norms and rules, function without EIA, without consideration of opinion of the local population.

9. Basalt plant. From the owners' words, it does not operate at the present time, but officially, sanitary services did not stop the activity. At any time, the plant can start industrial activity. It is located on a territory of an enterprise which unloads and packs cement, without observation of SPZ stipulated by the law, without EIA, without consideration of the public opinion of the local population.

In 2001, a group of Almaty residents after a long and unsuccessful correspondence with state officials addressed a court with a lawsuit against an industrial enterprise located in a direct vicinity of residential houses. The enterprise was operating with gross violations of the legislation. But no justice was achieved.

In 2004, a statement was filed to the Aarhus Convention Compliance Committee. The statement was considered and, in 2008, a decision of the Meeting of the Parties of the Convention was adopted in relation to violation by the Republic of Kazakhstan of a number of its provisions. Up until now, no significant changes in relation to compliance with international treaties took place.

Meanwhile, the struggle of the residents with the owners of the plant, which changed several times, continued. And, in fact, it is still continuing. By the current legislation, every five years industrial entities must conduct EIA, organize public hearings, receive conclusion of environmental assessment and sanitary and epidemiological conclusion, and only after that they can continue operation.

But for example, in 2007, public hearings on EIA were conducted without participation of the residents who live in 10-15 m from the enterprise border, and who suffer from its activity. The EIA was agreed and the enterprise continued its work, and... during 5 years, air around the houses was filled with cement dust.

Numerous times, there were instantaneous releases of contaminants into atmosphere. But the municipal environmental services were saying that they do not possess of high-speed vehicles to get on place within 30 minutes. There were other excuses as well: no time, necessity to agree their actions with the city Prosecutor's Office, etc. Photographs and video-taping made by the residents, by the ecologists opinion, cannot serve as a prove, and it is necessary to officially record an instantaneous release on-site right at the moment.

Therefore, the residents collected a whole archive of numerous responds from environmental and sanitary services that the facts stated in the claims were not confirmed.

Especially, we would like to point out the position of the sanitary inspectors whose direct responsibility is to protect the health of the people. They violated the method of air sampling all the time. Sanitary inspectors came during the time when no works were performed at the plants. In order to perform air sampling, it is necessary to notify the enterprise administration, tell the date and the time of the sampling. Of course, the enterprise administration took all possible measures not to conduct any works during this time. Even the workers were removed from the territory of the plant. As a result, the air samples turned out perfect.

By "Kazgidromet" data, our district is the most unfavorable in the city. Although, the part of the city located closer to the mountains cannot be considered environmentally clean now. But according to the SES of the city, our street and the territory where the houses are located are an island of well-being, "oasis".

In 2012, when the cement plant needed to conduct a new environmental impact assessment, other public hearings were organized by a demand of the residents. As stated by ecologists, sanitary inspectors, representatives of akimats (mayor's offices), these public hearings were conducted in a strict compliance with the legislation. At the public hearings there were invited: workers of the plant, their relatives, many of them, came to the city of Almaty just to visit the family. As a result, the residents concerned by the environmental situation and the living conditions appeared to be in a minority. Majority of those who were present at the hearings, including those whose permanent residencies are in other cities – Karaganda, Atyrau, Aktau, Kustanay, by a solid vote, stated that the enterprise does not harm the environment, provides work places, and must function in the same manner.

Speech of the head of the organization which developed the project of EIA was very "interesting". According to the project, the source of emissions of contaminants is located in the center of the enterprise. The sanitary and protection zone was counted and established based on this location. In fact, the source of emissions is located on the border of the enterprise, in closest

spot to the residential houses. A question of the residents – how it happened – a reply was received that the data was developed by a computer program, and all questions must be directed to the program developers. As a result, the project of the EIA was successfully agreed and the works continued.

But... something did not go smooth for the enterprise owners and in spring 2013, it was sold on non-judicial auction. A new owner, another juridical person, appeared. And our environmental services decided that the project of EIA in case does not need to be developed, and even sent the residents a copy of a reply from the Ministry of Environmental Protection which stated without a reference on a provision of the legislation that the EIA is not needed. New owner was issued a permit on emission in the environment. But the people did not agree with such position of the environmental services. And up until now, although yet unsuccessfully, they are trying to prove that the EIA is needed to be redone, based on references on the norms of the law.

By a request of the people, the Ecological Society Green Salvation addressed a court with lawsuit about cancellation of the Rules of conducting of public hearings, which do not comply with the Aarhus Convention. The case reached the Supreme Court, and there was a hope that it would solve the problem and make a lawful decision. But alas! The hope failed. The Supreme Court denied in satisfaction of the claimants' demand stating that no violations were found.

Numerous times, the people addressed sanitary services of the city of Almaty with a request to implement another requirement of the current legislation – to mark the sanitary and protection zones on the area by special signs. As a result, they had to file a lawsuit on failure to act by the director of the department of sanitary and epidemiological control of the city of Almaty. The legal proceedings took over a year, but the Supreme Court satisfied the lawsuit demands of the people in the full extent. By the court decision, the director of the department must require the industrial entities to mark the area with special signs of sanitary and protection zones and present the people with graphic materials showing such zones. At the present time, the court decision is filed to the department of court bailiffs, as it is not implemented voluntarily yet.

The deteriorating ecological situation made the people to think about existence of other industrial facilities. After studying current laws and regulations, we came to the conclusion that the three railway branch lines operate illegally, as they were construction without observation of sanitary gaps. Numerous replies from the state structures demonstrate that no documents exist to prove otherwise. The railway is used to transport different cargoes, including fuels and lubricants. The trains run 24 hours a day at a very high speed, which is associated with a loud noise and creates a threat to

people's lives. New high capacity locomotives create a strong vibration. As a result, walls in our houses got covered with cracks; it became impossible to have a full rest neither at night, nor during weekends. The owners strongly believe: "The railway was working and will be working!" The struggle has only begun.

There is one more serious problem. According to the General plan of development of the city of Almaty, widening of Bokeykhanov Street must be associated with demolition of all the residential houses. In this regard, we are not allowed to build any new houses on our own land plots, we can only repair the existing buildings within the existing limits. The street widening is already completed, but nobody knows when the demolition of the houses is going to take place. According to the replies of the akimat and the head architect, this will take place when they find an investor. This means – never, because nobody needs a strip of land of 50 to 15 m wide between a main road and a railway, nothing can be built on such piece of land.

Akimat of the city stated that widening of the street was conducted in the interests of residents of other districts of the city of Almaty. The main road with traffic intensity of approximately 56,000 cars per day is at the maximum close distance to the walls of our houses. Every day, heavy-load vehicles pass along the road which causes a strong vibration.

Active construction of a traffic ramp is conducted in the area of a flea market. After the ramp is open, the traffic along Bokeykhanov Street will significantly increase, the living conditions will become even worse. Again, the city officials act in the interests of other citizens, and ignore our interests.

Thus, the gross intentional incompliance with the laws by the authorities leads to violation of our rights on favorable for life and health environment, i.e. to discrimination by a place of residence and other circumstances.

By the fact of discrimination, we filed a lawsuit to a court. We passed all instances, but without any result. The main argument of the judges: it is necessary to appeal the General plan of the city development. We are still at a loss from such statement, as in the lawsuit, we asked to oblige the akimat to strictly follow the General plan of the city development in the part of our re-settlement from the industrial zone.

At the present time, the residents are planning to address international human rights organizations."

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