

Legal Proceedings of the Ecological Society Green Salvation in 2011-2013

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This material provides a brief summary of cases reviewed by courts under lawsuits of the Ecological Society Green Salvation (hereafter, ES) during 2011-2013 and analyzes typical violations of material and procedural law committed by courts. The legal practice of the society allows making a conclusion about violation of the main principles of the Article 9 of the Aarhus Convention. This article stipulates that each party provides any person an access to justice in the matters related to the environment, in the cases specified by the Convention.

I. Brief summary of the cases

No.1

Case on acknowledgment of a legal act – “Rules of conducting of public hearings” – to be contradictory to the laws of the Republic of Kazakhstan and the international agreement – Aarhus Convention.

Adopted in 2007, “Rules of conducting of public hearings”, in many aspects, contradict to the requirements of the Aarhus Convention. The Ecological Society numerous times indicated that the rules do not allow the public to participate effectively in the decision-making process. But because of all our appeals to the state organs were ignored, the organization had to address a court.

The lawsuit in the interests of an undetermined group of people is filed on **February 2, 2011**, to the Specialized Interregional Economic Court (SIEC) of the Astana City.

Demands:

1. To acknowledge the “Rules of conducting of public hearings” adopted on May 7, 2007, by an order of the Minister of Environmental Protection of the Republic of Kazakhstan No.135-p, to be contradictory to the requirements of the Aarhus Convention, Environmental Code, and the Law “About Normative Legal Acts”, i.e. to be invalid in the full volume.

2. To require the Ministry of Justice of the Republic of Kazakhstan to cancel the registration of the “Rules of Conducting of Public Hearings.”

On **February 11**, the SIEC made a decision to leave the lawsuit without a movement, because supposedly, it had been filed incorrectly. The deadline

for correction of the mistakes was set as February 21. But the notification was sent by the court only on February 17, and was received by the Ecological Society on February 21.

Despite of this fact, on **February 22**, the SIEC made a determination to return the lawsuit to the claimants.

On **March 9**, based on an appeal of the Ecological Society, the Astana City Court re-set the deadline for appealing of the SIEC's decision about returning of the lawsuit.

On **April 2**, the case was filed again to the SIEC of Astana, in order to speed up the process of its consideration.

On **April 29**, the SIEC returned the lawsuit again explaining that the paperwork had been, supposedly, filed incorrectly.

On **August 15**, the lawsuit is filed to the SIEC of Astana for the third time.

On **September 12**, the SIEC made a determination about returning of the lawsuit because the paperwork had been, supposedly, filed incorrectly.

On **September 26**, a private claim on the determination of the SIEC is filed to the court of the city of Astana.

On **November 23**, the court of the city of Astana refused to satisfy the private claim.

On **December 14**, a petition is sent to the Supreme Court.

On **December 26**, the Supreme Court left the petition without a review.

On **January 16**, 2012, another petition is sent to the Supreme Court.

On **January 21**, The Supreme Court notified the ES in written that the petition was left without a consideration, because the court did not find that the determinations of the courts of the first and appeal instances were impeding the review process of the case.

The statement was not accepted for consideration. The ES believes, this is a violation of the paragraph 4 of the Article 9 of the Aarhus Convention, because the public did not receive an access to justice.

No. 2

Case on failure of the Ministry of Environmental Protection (MEP) to provide environmental information – the National Report about compliance with the Aarhus Convention and its discussion materials.

The ES believes that the MEP violated the paragraph 1 of the Article 4 of the Aarhus Convention.

The lawsuit is filed to the SIEC of Astana city on **February 15, 2011**.

Demands:

1. To acknowledge the actions of the Ministry of Environmental Protection, which did not provide information to the Ecological Society Green Salvation, to be inaction, which violates the rights and lawful interests of the juridical person.

2. To require the MEP to provide the Ecological Society Green Salvation with the information, in particular:

- how was the report discussed with the public;
- where and when did “round tables” take place;
- what kind of comments were received from the public;
- how were they considered;
- when was the report sent to the Secretariat of the Convention;
- where could one get acquainted with the final version of the report?

In March-April, several court hearings took place.

On **April 25**, the court made a judgment by default and satisfied the demands of the Ecological Society Green Salvation.

The judgment came into force, the Ministry provided the information.

The court’s decision was executed only partially, as the state duty was not reimbursed.

No. 3

Case on failure of the Akim of Almaty City to provide information about relocation of people from a sanitary and protection zone of an enterprise “Tsentr beton” Ltd.

The ES believes that the akimat violated the paragraph 1 of the Article 4 of the Aarhus Convention.

The lawsuit in the interests of the residents of the city of Almaty is filed to the Court No.2 of Bostandykski District of Almaty City on **March 1, 2011**.

Demands:

1. To acknowledge the actions of the Akim of Almaty City, who did not reply in the essence to the request sent to him on December 22, 2010, to be inaction which violates the rights and lawful interests of the citizens.

2. To require the Akim of Almaty City to reply in the essence of the request, i.e. about the solution of the issue of relocation from the sanitary and protection zone of the “Tsentr beton” Ltd.

In **March-April**, several court hearings took place.

On **April 21**, the court refused to satisfy the lawsuit demands.

On **April 26**, an appeal is filed to the Appellate Board on Civic Affairs of the Almaty City Court.

On **May 24**, the appeal was not satisfied.

A decision was made not to file a cassation appeal.

On **August 17**, a petition is sent to the Supreme Court.

On **November 17**, at the preliminary hearing of the case, the Review Board of the Supreme Court refused to satisfy the petition.

On **December 7**, a letter with a request to issue an objection on the decision of the Supreme Court is sent to the General Prosecutor’s Office.

The claimant's demands were not satisfied, the information was not provided.

No. 4

Case on inaction of the organs of public administration, which caused formation of an illegal dump site in Panfilov village, Talgar District, Almaty Oblast.

The lawsuit in the interests of the residents of Panfilov village is filed on **September 16, 2011**, to the Court of the city of Talgar.

Demands:

1. To acknowledge the failure of the defendants – Akimat of the village and other authorized state organs – to fulfill their direct responsibilities in providing environmental and sanitary and epidemiological well-being of the residents of Panfilov village to be illegal, i.e. inaction.

2. To require the defendants to take immediate actions, in order to liquidate the dump site, demolish the abandoned buildings, and bring the land sites into a proper condition, in accordance with the legislation.

On **September 21**, the court made a statement to leave the case without a motion.

On **September 29**, a reply to the statement and a letter to the chairman of the court were filed.

On **October 25**, the court made a determination to leave the case without a motion.

On **November 2**, a reply to the determination of the court is filed.

On **November 7**, by twisting the claimant's demands, the court made a decision to return the case.

On **December 21**, a private complaint is filed to the Almaty Oblast Court.

On **February 1, 2012**, the court made a determination to leave the complaint without satisfaction, saying that the Ecological Society Green Salvation, supposedly, did not present a document confirming its right to protect interests of the citizens in court. The judge did not get acquainted with the by-laws of the organization.

The statement was not accepted for consideration. The ES believes that this is a violation of the paragraph 4 of the Article 9 of the Aarhus Convention, because the public did not receive an access to justice.

No. 5

Case about inaction of the Akim of the city of Almaty, which caused discrimination of citizens residing on Bokeykhanov street, Almaty.

The lawsuit in the interests of the residents of Almaty is filed to the Court of Bostandyk District of the city of Almaty on **November 23, 2011**.

Demands:

1. To acknowledge the failure of the Akim of Almaty to carry out his professional responsibilities, and also his failure to comply with the national and international agreements, which has led to discrimination by a place of residence of the citizens living on Bokeykhanov street, city of Almaty, to be inaction.

2. To acknowledge the lack of control allowed by the Akim of the city of Almaty over the authorized organs who violated the national legislation which prohibits people from living in sanitary and protection zones of enterprises, in particular, the residents of Bokaykhanov street, Almaty, to be illegal inaction.

3. Following the paragraph 1 of the Article 282 of the Civil Procedural Code (CPC), to require Akim of the city of Almaty to liquidate the violations of the legislation in respect of the residents of Bokeykhanov street by their resettlement from the sanitary and protection zone and providing them with adequate dwelling, in accordance with the current legislation.

On **November 25**, the court made a determination about leaving the case without any further consideration.

On **December 9**, the court made a determination about returning the case. The ES received the documents only on December 23, after an appeal deadline had passed.

On **December 28**, a private complaint on determination of the Bostandyk District Court is submitted to the Almaty City Court.

On **January 27, 2012**, the Bostandyk District Court made a decision about returning of the private complaint, because, supposedly, the appealing deadline had past and there was not any statement about re-establishing the appeal period.

The lawsuit was not accepted for consideration.

The statement was not accepted for consideration. The ES believes that this is a violation of the paragraph 4 of the Article 9 of the Aarhus Convention, because the public did not receive an access to justice.

No. 6

Case about acknowledging of a normative legal act – “Rules of conducting of public hearings” – to be contradictory to the laws of the Republic of Kazakhstan and international agreement – Aarhus Convention.

Due to the fact that the active rules violated rights of the citizens, in particular, the people living on Bokeykhanov street of the city of Almaty, on participation in decision-making process, the ES supported their lawsuit.

The lawsuit is filed on **April 9, 2012**, in the interests of residents of Bokeykhanov street, city of Almaty, to the Essil District Court of Astana City.

Demands:

1. To acknowledge the “Rules of conducting of public hearings”, signed on May 7, 2007, by a decree of the Minister of Environmental Protection, No.135-p, to be contradictory to the requirements of the Aarhus Convention, Environmental Code, and Law “About normative legal acts”, i.e. invalid in the full extent.

2. To oblige the Ministry of Justice to cancel registration of the “Rules of conducting of public hearings.”

On **April 16**, the court made a determination about leaving the lawsuit without consideration, supposedly, because of improper execution of the papers, in particular: because of a lack of an indication of a source where the Rules had been published.

On **May 29**, after the judge’s re-insight with the claim, the case was accepted for a legal proceeding.

On **June 26**, the court made a decision to refuse to satisfy the lawsuit demands, explaining it by a lack of a matter of dispute, because during the case proceedings, the Ministry introduced amendments to the Rules. These amendments did not eliminate contradictions between the “Rules of conducting of public hearings” and the Aarhus Convention.

On **July 30**, an appeal was submitted to the Astana City Court.

On **September 17**, the court agreed with the reasons of the court of the first instance and recognized the decision to be lawful.

On **October 22**, a cassation appeal was submitted to the Astana City Court.

On **December 4**, the cassation board acknowledged that:

- the Essyl District Court of the city of Astana did not consider the case within the ten-day period which was a violation of the p.2 article 284 of the Civil Procedural Code of the Republic of Kazakhstan;

- “conclusions of the court about the lack of a matter of dispute are baseless”;

- “the court did not review the matter about compliance of the indicated (in the claim – Editor’s note) provisions of the Rules with the requirements of the laws of the Republic of Kazakhstan in the essence.”

The cassation board cancelled the decision of the Essyl District Court of Astana City and the statement of the appeal board of the Astana City Court, and sent the case for re-consideration to the court of the first instance with a different composition of the court.

On **February 5, 2013**, court hearings took place in the Essyl District Court of Astana City. The court denied in satisfaction of the lawsuit demands allowing a loose interpretation of the Aarhus Convention, in violation of the

Articles 11, 26, 27, 31, and 32 of the Vienna Convention on the Law of Treaties which was joined by Kazakhstan on March 31, 1993.

On **February 18**, an appeal to the decision of the Essyl District Court of Astana City was filed to the appeal board of the Astana City Court.

On **February 28**, the prosecutor of Essyl District issued a protest against the decision of the court. The prosecutor asked the board to satisfy the claimant's demands, as the judge violated material and procedural law when taking the decision.

On **March 12**, the appeal's review was postponed, as the defendants' representatives and the prosecutor were not prepared. As a result, the claimant sustained additional court expenses (travel costs to the board hearings in Astana and back).

On **March 19**, the appeal board of the Astana City court denied satisfying the claim without taking into consideration the conclusions of the cassation board dated on December 4, 2012, and without satisfying the protest of the prosecutor of the Essyl District.

On **June 27**, a cassation appeal on the determination of the appeal board was sent to the Astana City Court.

On **July 18**, the appeal was returned without consideration as if a fifteen-day period of time for it to be filed was missed.

On **July 29**, claimants submitted a petition to the Civil Affairs Review Board of the Supreme Court about cancellation of the decision of the Yessil District Court of the city of Astana and the determination of the Appeal Board of the Astana City Court.

On **August 22**, the Review Board made a determination that the Astana City Court returned the cassation appeal to the claimants without a basis, as the court did not take into consideration amendments introduced to the Civil Procedural Code on February 17, 2012.

On **September 6**, the second cassation appeal on the decision of the Yessil District Court of the city of Astana and the determination of the Appeal Board of the Astana City Court is filed to the Astana City Court.

On **October 22**, for the second time, the Cassation Board denied to satisfy the complaint, as if "a lack of necessary proves" and "incorrect interpreting of the legislative norms."

On **November 7**, the claimants addressed the Review Board on Civil Rights of the Supreme Court with a petition against the statement of the Cassation Board of the Astana City Court.

On **December 23**, at a preliminary meeting, the Review Board on Civil Rights of the Supreme Court made a statement about initiating a review proceeding.

On **February 4, 2014**, the Board made a statement about leaving the

petition without a satisfaction. The Board did not find violations of material and procedural law and came to a conclusion that the Rules were brought into compliance with the requirements of the Aarhus Convention. It was not taken into consideration that the amendments into the Rules were introduced after the public address to the court, and that some of the amendments had been suggested by the claimants. The judges were not embarrassed by the fact that in December 2013, in the National Report on Compliance with the Aarhus Convention prepared for the Fifth Meeting of the Parties of the Convention, the Ministry of the Environment and Water Resources admitted that the new edition of the Rules “does not exclude a possibility of conducting of the public hearings just as a formality without necessary thorough accountability of all possible consequences of a planned economic activity, i.e. basic principles of the EIA.”

The case remains open.

No. 7

Case about failure to provide environmental information by the Department of Land Relations and the Department of Architecture and Urban Planning of Karasai district, Almaty oblast.

The ES believes that the state officials violated the paragraph 1 of the Article 4 of the Aarhus Convention.

The lawsuit in the interests of the residents of the village Irgeli was filed on **May 8, 2012**, to the Karasai District Court, Almaty oblast.

Demands:

1. To acknowledge actions of the Department of Land Relations and Department of Architecture and Urban Planning that did not provide the Ecological Society Green Salvation with the requested information to be inaction which violates rights and lawful interests of the legal person.
2. To require to provide the information.

On **May 15**, the court made a determination about returning the case, as if the process of the pre-judicial dispute resolution were not complied.

On **June 11**, the ES sent a request to the court regarding the court's determination about returning of the lawsuit which had never been received by the ES.

The case materials were returned to the claimant only on **July 26** after a representative of the organization addressed the chairman of the Karasai District Court, Almaty oblast.

On **August 2**, a private complaint was submitted to the Almaty Oblast Court.

On **August 28**, the court cancelled the determination of the Karasai

District Court of Almaty oblast, and sent the case to the same court for re-consideration of the claim from the beginning point.

On **September 11**, based on the information received from the judge's secretary, supposedly, there was a determination made to return the case because of lack of jurisdiction to this court.

On **October 20**, the case was returned to the claimant without the court's determination about returning the case.

On **November 2**, a representative of the ES addressed the Chairman of the Court regarding the failure to provide the determination. The Chairman made arrangements to send out the determination to the claimant.

On **November 27**, the determination was received.

On **December 4**, an appeal is submitted to the Specialized Interregional Economic Court of Almaty Oblast.

On **December 11**, the court made a determination about returning the appeal, explaining that it had been submitted by an unauthorized person and that the court lacked a jurisdiction. The determination indicates that the appeal was, supposedly, executed incorrectly, and lacked documents confirming the claimant's demands. "From the content of the text of the appeal and its resolute part, it is impossible to understand what the violations of the state authorities are."

Besides, the determination indicated that the ES – is a public organization, which purpose is to "facilitate improvement of social and economic (in the Charter – "social and ecological" – editor's note) situation of the Republic of Kazakhstan. Territory of activity was determined as the city of Almaty. ... The claimant litigates the actions of the state authorities of the Almaty oblast, not the city of Almaty."

The court discriminates the ES violating the p.9, article 3 of the Aarhus Convention which states: "Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities."

On **December 24**, private complaint was submitted to the Almaty Oblast Court.

On **February 12, 2013**, the appeal board cancelled the determination of the Specialized Interregional Economic Court (SIEC) of Almaty oblast dated on **December 11, 2012**, and sent the case to the same court to be reviewed starting from the point of acceptance to the proceeding.

On **March 27**, the SIEC of Almaty oblast made a decision in absentia about satisfaction of the claimant's demands.

On **April 17**, based on the statement of the Head of the Department of Architecture and Urban Development about cancellation of the decision in absentia dated on March 27, the court cancelled it and re-started reviewing the case.

On **May 16**, for the second time, the SIEC made a decision about satisfaction of the claimant's demands. The court admitted that the actions of the Department of Land Relations and Department of Architecture and Urban Development were illegal and obliged them to provide the information.

On **June 10**, the court decision came into a legal force.

The court's decision is not being implemented.

No. 8

Case about failure to provide environmental information by the Department of the Committee of the State Sanitary and Epidemiological Control of the Ministry of Health in the city of Almaty.

The ES believe that the state organ violated the paragraph 1 of the Article 4 of the Aarhus Convention.

The lawsuit in the interests of the residents of Bokeykhanov street is filed on **June 6, 2012**, to the Specialized Interregional Economic Court of the City of Almaty.

Demands:

1. To acknowledge the actions of the Department that did not provide the requested information to the Ecological Society Green Salvation to be inaction which violates rights and lawful interests of the juridical person.

2. To require the Department to provide the information, specifically: a copy of the project of reduction of the sanitary and protection zone (SPZ) for the enterprise "Tsentrobeton" Ltd.; a document justifying alteration of the category of sanitary threat of the enterprise; a copy of the minutes of public hearings on the project of reduction of the SPZ for the enterprises including a list of the participants.

On **June 13**, the court made a determination about returning of the case objecting the court's jurisdiction.

On **June 25**, a private complaint was filed to the Almaty City Court.

On **July 17**, in violation of the paragraph 1, article 280 of the Civil Procedural Code of the Republic of Kazakhstan, the court returned the private complaint, as if the determination's appealing period had passed.

On **July 30**, a request to accept the complaint for a review was sent to the chairman of the Almaty City Court.

On **August 10**, the chairman of the Almaty City Court informed that he did not find any violations of the procedural norms by the judge.

On **September 10**, a letter was sent to the chairman of the Supreme Court requesting to review the claim of the Ecological Society Green Salvation and to oblige the chairman of the Almaty City Court to consider the claim of the citizens per se.

On **September 26**, the letter of the ES sent to the Supreme Court was answered by the chairman of the Almaty City Court. The answer said that the judges did not commit any procedural violations.

Manipulating with the provisions of the Civil Procedural Code of the Republic of Kazakhstan, the court did not accept the claim for consideration, in violation of the p. 1 and 2, article 9 of the Aarhus Convention, which created obstacles to access justice in the matter of providing information and failure to act by the public authorities.

The case was not accepted for consideration.

No. 9

Case about failure to act by authorities which led to formation of an illegal dumpster in Panfilov village, Talgar district, Almaty oblast.

Lawsuit in the interests of the residents of Panfilov village is filed on **June 19, 2012**, to the Court of the city of Talgar.

Demands:

1. To acknowledge failure of the authorities to perform their direct responsibilities in providing environmental and sanitary and epidemiological welfare of the village to be illegal, i.e. inaction.

2. To require the authorities in the limits of their powers to take immediate actions to normalize the environmental and sanitary and epidemiological conditions in the village.

On **June 29**, the court made a determination about leaving the case without a progress, as if the papers were improperly executed. In violation of the p.1, article 222 of the Civil Procedural Code of the Republic of Kazakhstan, the court indicated that “the court does not have a right to instruct a state authority to make a specific action.”

On **July 17**, the claim was re-submitted to the Talgar City Court without any changes in the demands.

On **August 6**, the case hearings began.

On **August 28**, the court made a decision to partially satisfy the demands. The decision admitted the fact of failure to act by the akim (mayor) of Panfilov village of Talgar district. It was indicated that he must take measures to restore the normal ecological and sanitary and epidemiological conditions in the village.

In the end of **September**, the akim of Panfilov village submitted an appeal

to the Almaty Oblast Court, claiming that the court, supposedly, accepted the claim of the ES illegally and without a basis, because the citizens were not members of the ES.

On **October 30**, the appeal board of the Almaty Oblast Court denied satisfying the akim's claim leaving the court's decision without any changes. The defendant has a right to appeal against the decision during a six months period.

The court's decision came in force.

The court's decision is not being implemented.

No. 10

Case about failure to act by the akim of Almaty which led to discrimination of the citizens residing on Bokeykhanov street, city of Almaty.

Due to the continuing discrimination, the people with a support of the ES addressed a court again.

Lawsuit in the interests of the residents of Bokeykhanov street is filed on **June 26, 2012**, to the Court of Zhetysu district, city of Almaty.

Demands:

1. To acknowledge the failure of the akim of Almaty to perform his administrative duties in implementation of the General Plan of the city development, and also his in compliance with the Constitution, requirements of the Environmental Code, Law "About architectural, urban planning, and civil engineering activity in the Republic of Kazakhstan", international agreement – Aarhus Convention, International Pact about civil and political rights and other international agreements, which led to discrimination of the residents of Bokeykhanov street based on their place of residence and other circumstances, to be illegal, i.e. inaction.

2. To acknowledge the failure of the akim of Zhetysu district of the city of Almaty to perform his administrative duties during capital repairs of Bokeykhanov street which led to discrimination of the residents based on their place of residents and other circumstances, to be illegal, i.e. inaction.

3. To require the akim of the city of Almaty to eliminate the violations of the Constitution by resettling the people from the limits of a sanitary and protection zone and providing them with adequate housing, in accordance with the current legislation.

Court hearings on the case started on **July 23**.

On **September 5**, after several court hearings, the court denied satisfying the demands, as if no violations of law or citizens' rights were committed by the executive authorities.

On **October 3**, 28 days after the decision was made and after several complaints on the actions of the judge, the decision was received.

On **October 15**, an appeal was submitted to the Almaty City Court.

On **December 20**, the appeal board of the Almaty City Court denied satisfying the claim.

On **March 15, 2013**, a cassation appeal was filed to the Almaty City Court.

On **April 5**, the cassation board of the Almaty City Court denied satisfying the claim.

During the hearings, the Head of the board (alias Head of the Almaty City Court) allowed himself unethical expressions towards the claimants. In this regard, on April 15, a claim was filed to the Court Ethics Commission of the branch office of the Supreme Court's Union of Judges. The later forwarded the claim to the Court Ethics Commission of the Almaty City Court. This is a violation of the sub-paragraph 2, paragraph 2, article 15 of the Law "About Administrative procedures" and sub-paragraph 6, paragraph 2, article 15 of the Law "About the order of reviewing statements from natural and legal persons." On April 25, the Court Ethics Commission of the Almaty City Court reviewed the claim but did not find any violations of the norms of the Court Ethics Code.

On **June 14**, a petition against the determination of the Cassation Board of the Almaty City Court was filed to the Civil Affairs Review Board of the Supreme Court.

On **June 26**, the Supreme Court returned the petition because originals of power of attorneys were not presented.

On **July 22**, the petition was filed to the Supreme Court for the second time.

On **September 12**, the Review Board denied to initiate a review procedure because, in the judges' opinion, there was no basis to review the court acts.

The claimants' demands were left without satisfaction.

The ES believes that this is a violation of the paragraph 4 of the Article 9 of the Aarhus Convention, because no just and unbiased review process was established, and no access to adequate and effective remedies of legal protection was provided.

No. 11

Case about failure to act by the director of the Department of the Committee of the State Sanitary and Epidemiological Control of the city of Almaty (DCSSEC) which was expressed in a lack of control over marking of sanitary and protection zones by special signs in the area.

The lawsuit in the interests of the citizens residing on Bokeikhanov Street is submitted on **October 17, 2012**, to the Medeu District Court of the city of Almaty.

Demands:

1. To acknowledge the failure to act by the authority – director of the Department – the failure to implement the sanitary and epidemiological control over establishing and marking of sanitary and protection zones and gaps by special signs on the area.
2. To oblige the authority – director of the Department – take measures to implement the norms of the Land Code, in the part of control over marking up territory with special signs which indicate sanitary and protection zones and gaps.

On **October 22**, the court made a determination about leaving the case without a progress, as if the papers were improperly executed, in particular: “It was not indicated based on which normative legal acts the director of the department of the CSSEC must mark up the territory with special signs indicating sanitary and protection zones and gaps.”

On **October 31**, a reply about unlawfulness of leaving the case without a progress was sent to the court.

On **November 14**, the court hearings on the case began.

From **December 5** to 26, several court hearings took place.

On **December 26**, the court made a decision to deny in satisfaction of the claimants’ demands.

On **January 25**, a claim against the decision of the judge of Medeu District Court of Almaty City dated on December 26, 2012, was filed to the appeal board of the Almaty City Court.

On **March 1, 2013**, the review of the appeal was delayed because the defendant’s representative was not prepared.

On **March 18**, the appeal board of Almaty City Court denied satisfying the claim.

During review of the claim, the judges agreed with the conclusions of the judge of the district court, who:

- in violation of the article 192 of the Civil Procedural Code of the RK, did not review the case in its essence;
- exceeded the case demands, in violation of the paragraph 2, article 219 of the Civil Procedural Code of the RK, by reviewing matters not agreed by the claimants, and did not determine an appropriate defendant, in violation of the paragraph 3, article 170 of the Civil Procedural Code of the RK;
- ignored the fact that, in violation of the paragraph 4, article 165 of the Environmental Code of the RK and paragraph 5, article 4 of the Aarhus Convention, the defendant did not present information about a state organ which controls the process of marking the territory with signs of sanitary protection zones and gaps.

On **May 30**, a cassation appeal was filed to the Almaty City Court.

On **July 2**, the Cassation Board of the Almaty City Court denied in satisfaction of the claim. The claimants sent a petition about objection of the Head of the board (alias Head of the Almaty City Court) because of his unethical expressions towards them during consideration of a cassation appeal for another case. The petition about objection was not satisfied.

Prosecutor, who was present at the hearings, did not protest the above mentioned violations of the procedural and material law.

On **August 8**, the claimants filed a petition against the determination of the cassation board of the Almaty City Court to the Civil Affairs Review Board of the Supreme Court.

On **September 5**, the Review Board began reviewing the claim, but because of the complexity of the matter decided to request all materials on the case for studying.

On **October 24**, at the preliminary hearings, the Review Board of the Supreme Court decided to initiate a review procedure.

On **November 27**, the Review Board made a statement:

- the decision of the Medeu District Court of the City of Almaty dated on December 26, 2012, statement of the Appeal Board on Civil and Administrative Affairs of the Almaty City Court dated on March 18, 2013, and the statement of the cassation court board of the Almaty City Court dated on July 2, 2013, related to this case shall be cancelled and new decision about satisfaction of the lawsuit shall be adopted;
- to acknowledge the failure of the authority to provide a control over establishing and marking of the sanitary and protection zones with special signs on-site to be inaction;
- to oblige the authority to take measures, in order to exercise the control.

The decision is not implemented.

The Supreme Court admitted violation of the paragraph 5 of the Article 4 of the Aarhus Convention, but the reviewing process of the case continued for 13 months.

No. 12

Case about a failure to act by the Ministry of Environmental Protection and vice-minister of Environmental Protection about failure to comply with their responsibilities of efficient utilization of the state property for the public good and responsibilities to conduct control over integrity of the property of the Republic's legal person – Ile-Alatau State National Natural Park.

The lawsuit in the public interests was filed on **June 3, 2013**, to the Specialized Interregional Economic Court (SIEC) of the City of Astana.

Demands:

1. To acknowledge failure of the Ministry of Environmental Protection to comply with its direct responsibilities of efficient utilization of the state property for the public good and to conduct control over integrity of the property of the Republic's legal person – Ile-Alatau State National Natural Park, to be inaction.

2. To oblige the Ministry of Environmental Protection to undertake measures to prevent construction of the new mountain ski resort “Kokzhailau” on the territory of the national park, in order to efficiently utilize the state property for the public good.

On **July 5**, the statement was returned as if of lack of jurisdiction to this court.

On **July 22**, after several amendments to the statement were made, it was filed to the SIEC of the City of Astana again.

On **July 30**, the statement was returned again, as if of lack of jurisdiction to this court.

On **August 14**, the case is submitted to the Yessil District court of the City of Astana.

On **August 26**, the case is left without a movement till September 9, as if the paperwork was done incorrectly: it was not indicated which actions were disputed, which rights and freedoms of the claimant were violated, and the fee was not paid.

The determination dated on August 26 was sent from Astana on September 3, arrived to the city of Almaty on **September 9**. Of course, the claimant could not meet all the requirements before the indicated date, without being informed in time.

On **September 10**, the judge of the Yessil District Court made a determination about leaving the case without consideration and about returning it to the claimant.

On **September 11**, a representative of the Ecological Society Green Salvation, who was in Astana at that time, asked the judge's secretary for the determination and the case materials. The secretary replied that the determination had not been signed by the judge yet, and that the materials would be sent right after its signing.

On **October 17**, after numerous persistent demands of the claimant to return the statement and the case materials, they were sent to the claimant and received on October 21. As a result of violation of the norms of the Civil Procedural Code by the court officials, the period of appeal of the determination dated on September 10 had past.

On **October 28**, a private complaint over actions of the judge of the Yessil District Court is sent to the Head of the Civil Affaires Appeal Board of the City

of Astana. The ES asked to renew the period of appeal of the determination dated on September 10 and to cancel it as illegally made.

On **December 10**, the Appeal Board denied in satisfaction of the private complaint, as if the ES had not paid the state fees and had not presented documents proving the facts stated in the complaint.

The Appeal Board did not consider a question of the ES about violation by the court employees of the norms of the CPC which resulted in missing of the appealing deadline for the determination dated on September 10.

The case remains open.

The ES believes that the courts violated the paragraph 2 of the Article 9 of the Aarhus Convention, because the public did not receive an access to a review procedure before a court concerning the inaction by the state officials.

No. 13

Case about acknowledging of the conclusion of the state environmental assessment – preliminary Environmental Impact Assessment of the project of mountain ski resort “Kokzhailau” – to be invalid.

The lawsuit in public interests was filed on **October 7, 2013**, to the Specialized Interregional Economic Court of the City of Almaty.

Demand:

To acknowledge the conclusion of the state environmental assessment of the preliminary Environmental Impact Assessment of the feasibility study of the project of mountain ski resort “Kokzhailau” dated on April 13, 2013, conducted by the Department of Natural Resources and Nature Management Regulation of the City of Almaty - to be invalid.

On **November 11**, a court hearings took place.

From **November 15 to 25**, there were several court meetings.

On **November 25**, the court denied in satisfaction of the lawsuit. The court made this decision without providing an explanation.

On **December 12**, an appeal on the SIEC’s decision was filed to the Almaty City Court.

The case remains open.

No. 14

Case about acknowledging the conclusion of the state environmental assessment to be invalid and about stopping the enterprise’s activity.

The ES believes that the paragraphs 2, 3, 4, and 8 of the Article 6 of the Aarhus Convention were violated.

The lawsuit in the interest of residents of Velikolukskaya street is filed on **November 4, 2013**, to the Specialized Interregional Court of the City of Almaty.

Demands:

1. To acknowledge the conclusion of the state environmental assessment on the project – “Environmental Impact Assessment” of a production workshop for manufacturing of external advertisement – to be invalid.
2. To oblige the Department of Natural Resources and Nature Management Regulation of the City of Almaty to recall the issued conclusion and to ban the enterprise’s activity which causes a negative impact on the environment and the residents’ health.

On **November 8**, the SIEC declined the lawsuit, explaining it by a lack of jurisdiction.

On **November 21**, a statement was filed to the Medeu District Court of the city of Almaty.

On **December 30**, the court hearings took place.

The case remains open.

Rights and legal interests of the Ecological Society “Green Salvation” are defended in court by lawyer Svetlana Philippovna Katorcha.

II. Violations of the Aarhus Convention and obstacles for access to justice demonstrated by our experience in courts

Judicial practice of the ES allows discovering numerous violations of the material and procedural law by the courts and also obstacles for access to justice.

Below are the most typical violations of the material and procedural law by the courts.

1. Courts are still under control of executive organs. By the opinion of the European Bank of Reconstruction and Development in Kazakhstan, “in practice, however, the independence of the judiciary is constrained by the influence of the executive, and corruption is evident throughout the judicial system. The judiciary’s inadequate level of independence undermines their ability to exercise an oversight of the executive... A major problem affecting the success of the anti-corruption efforts is the lack of independence of the judiciary.”¹

2. Courts of all levels avoid acknowledging violations of human rights by the state officials even when the latter admit it themselves. Example: the Supreme Court denied the ES to satisfy demands on acknowledging the Rules about conducting of public hearings to be invalid and contradictory to the

¹ Strategy for Kazakhstan. European Bank for Reconstruction and Development: <http://www.ebrd.com/downloads/country/strategy/kazakhstan-strategy-2013.pdf>, December 17, 2013, p.34, 35.

Aarhus Convention (see the case No.1). At the same time, in the National Report presented by the Republic of Kazakhstan to the Fifth Meeting of the Parties of the Aarhus Convention, it is admitted that the new edition of the Rules, as well, “does not exclude possibility of conducting of public hearings just as a formality” (see the case No.1, 6).

In March 2014, the MEWR decided to introduce amendments to the Rules and discuss them with the public beforehand. Bu this, the public officials acknowledges the discrepancy of the Rules with the requirements of the Aarhus Convention and national legislation, but trying to save the face, the court declined all arguments of the claimants.

3. Lawsuits are not review within the timeframes specified by the CPC (we believe, that none of the lawsuits described above was reviewed within the timeframes stipulated by the law).

4. Even if decisions are made in favor of the public, they are not executed for years. The main excuses, usually, are: lack of money, change of leadership in the state organs, unclear division of authorities between state officials.

5. When reviewing the statements, judges exceed lawsuit demands in violation of the CPC (see the case No.11).

6. Under any excuse, judges try not to accept statements from the public. The most popular excuses are incorrect execution of papers (see the cases No.1, 4, 5, 6, 9, 11) and incorrect determination of jurisdiction (see the cases No.7, 8, 12, 14).

7. Courts interpret the legislation at their own will, and in the majority of cases, ignore arguments of claimants.

8. Courts, practically, do not base their decisions on international conventions ratified by Kazakhstan.

9. In the majority of cases, courts take the side of businessmen, despite of their obvious violations of the environmental legislation.

10. Organs of the Prosecutor’s Office, practically, do not “execute control over respect for rights and freedoms of a human and citizen.”

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