

# **GREEN SALVATION HERALD 2011**

*For the Fourth Meeting  
of the Parties to the Aarhus Convention*

**The English supplement to the Bulletin  
of the Ecological Society Green Salvation**

---



Almaty – Kazakhstan  
2011

УДК 502/504  
ББК 20.1  
Б38

---

The *Green Salvation Herald* is the English supplement to the *Bulletin of Green Salvation*

Editor: **Michelle Kinman**

Translators: **Michelle Kinman, Sofya Tairova, and Glenn Kempf**

Designer: **Elena Panyukova**

The photograph on the inside front cover page was taken by **Valentina Serova**; the photos on pages 2 and 3 of the cover were taken by **Alexander Zhdanko**.

Signed articles express the opinions of the authors and do not necessarily represent the opinions of Green Salvation or those of the editors of the *Green Salvation Herald*.

If you would like to reprint material from the *Herald*, please contact the Ecological Society Green Salvation.

ВЕСТНИК «ЗЕЛЕНОЕ СПАСЕНИЕ» 2011. – Алматы, 2011. – 92 с.

ISBN 9965-9560-8-1

Submitted to publisher 20.05.11. Approved for printing 01.06.11.

Number of copies printed: 300.

Printed by: “Luxe Media Group” LLP, Kazakhstan, Almaty, Kazybaeva Street, 4.  
Tel. 2-333-178.

ISBN 9965-9560-8-1

Copyright © 2011 The Ecological Society Green Salvation

Photographs copyright © 2011 Alexander Zhdanko, Valentina Serova

## CONTENTS

<b>Acknowledgments.....</b>	<b>4</b>
<b>From the Editor.....</b>	<b>5</b>
<b>The Ecological Society Green Salvation.....</b>	<b>8</b>
<b>The Question of Compliance with the Aarhus Convention in the Republic of Kazakhstan</b> Svetlana Katorcha, Sergey Kuratov, Nataliya Medvedeva, Svetlana Spatar....	11
<b>Universal Periodic Review of the Republic of Kazakhstan, 2010 Submission by Earthjustice</b> Martin Wagner.....	26
<b>Violations of the Human Right to a Favorable Environment in the Republic of Kazakhstan</b> Svetlana Katorcha, Sergey Kuratov, Nataliya Medvedeva, Alexander Shitov.....	32
<b>Legal Practice of the Ecological Society Green Salvation</b> Svetlana Katorcha, Sergey Kuratov, Nataliya Medvedeva.....	42
<b>Appendix. The Evolution of Kazakhstan's Environmental Protection Legislation.....</b>	<b>61</b>
<b>Monitoring Compliance with the Aarhus Convention</b> Nataliya Medvedeva.....	74
<b>Public Access to Environmental Information in Kazakhstan</b> Svetlana Spatar.....	89

## Acknowledgments

The Ecological Society Green Salvation sincerely thanks our sponsor, the Foundation Open Society Institute (Hungary), for its financial support of the organization's activities, particularly our work in the courts, without which many of the articles in this issue would not be possible, as well as for the publication of the *Herald*.

We are indebted to many individuals and organizations for their support and assistance in completing this publication. Special recognition is due to Michelle Kinman, Sofya Tairova, and Glenn Kempf, who played an invaluable role in the preparation of this issue.

Finally, the Ecological Society Green Salvation wishes to thank all who helped us to prepare this issue.

## From the Editor

It has been three years since the conclusion of the Third Meeting of the Parties to the Aarhus Convention in Riga, Latvia. Despite some successful measures undertaken by the state authorities, in general, the environmental situation in the Republic of Kazakhstan has continued to deteriorate throughout this period. The country's main social and economic indicators are also deplorable. At best, they demonstrate stagnation in all aspects of society; at worst, they show that the overall situation in the country is becoming more and more alarming.

Official statistics show an increase in the gross domestic product and economic growth rates. This has been achieved primarily by destroying Kazakhstan's natural resources. Many scientists, politicians, and public representatives have long doubted the aforementioned indicators, as they do not answer the question of how sustainable this development is, how the state of the environment is changing, and how the human right to a favorable environment is regarded. And even these traditional indicators do not provide evidence of Kazakhstan's prosperity. For example, according to the International Monetary Fund, in 2010, Kazakhstan's gross domestic product per capita was equal to 8,326 US dollars. At the same time, in Libya and Bahrain, where mass public riots are taking place, this indicator was equal to 12,062 and 19,641 dollars respectively.<sup>1</sup>

In order to develop more trusted criteria for social and environmental assessment, the UN Division for Sustainable Development has worked since the mid-1990s to determine indicators of sustainable development. Kazakhstan's public authorities officially state their commitment to the concept of sustainable development.<sup>2</sup> But no information about the real social and environmental situation is available and no indicators of sustainable development have been developed.

A more or less realistic sense of the situation in the Republic can be obtained from the data provided by international organizations and independent rating agencies. Let us have a look at the most conspicuous examples.

The World Bank's Worldwide Governance Indicators put Kazakhstan at the same level with the most troublesome countries: the Voice and Accountability indicator for Kazakhstan is lower than for Haiti, and the Rule of Law indicator puts the country behind Libya.<sup>3</sup>

Corruption continues to be one of the major problems in the country. For the last ten years, the level of corruption has barely changed, proving the inefficiency of the measures undertaken by the government.<sup>4</sup> The extraction industry and the Ministry of Environmental Protection have not avoided

corruption in their entities either. According to calculations performed by Transparency International, Kazakhstan is among the countries with a high level of corruption, such as Senegal, Zambia, and Egypt.<sup>5</sup>

According to the Failed States Index, Kazakhstan is categorized as a country of 'warning'.<sup>6</sup> A high level of criminalization and delegitimization of the state is noted in the country. This, in turn, impedes public participation in the decision-making process, in particular, on issues related to the environment.

Other indicators only confirm and bring more details to the overall picture.

Based on the aforementioned, it cannot be expected that the government, which is in a state of social and economic stagnation, will give an extraordinary performance in terms of fulfilling its international obligations under the Aarhus Convention.

The country still lacks a clear environmental policy, and environmental protection is not a priority, while the exploitation of natural resources brings enormous benefits to only a limited group of people. Transnational corporations are satisfied with such conditions. This is often pointed out by specialists, scientists, and public activists, including our organization.

The country faces the merging of governmental authorities with criminal structures, the disorganization of the activities of state bodies and disruption of their regular functioning, and a decreasing level of control, all of which represents a threat to national security.<sup>7</sup> As noted by experts from the Organization for Economic Co-operation and Development, "pervasive disregard for law ... continues to raise concerns in Kazakhstan as non-compliance prevents the country from achieving ambitious environmental objectives."<sup>8</sup> Under the guise of adapting national laws to international requirements, state authorities continually weaken environmental legislation. In so doing, they create the grounds for mass violations of the human right to a favorable environment.

Guided by the political situation, the government applies international legal norms selectively. In particular, decision II/5a of the Second Meeting of the Parties and decision III/6c of the Third Meeting of the Parties to the Aarhus Convention have still not been implemented. The overwhelming majority of people are still removed from participation in the decision-making process on issues related to the environment, and their opinion is not taken into account. It is not surprising that the National Report to the Fourth Meeting of the Parties was prepared without serious discussion with the public and without consideration for the stipulated procedures.

This new issue of the *Herald* is devoted to the legal aspects of the social and environmental situation in Kazakhstan. It is based on the materials of the Ecological Society Green Salvation and, therefore, cannot claim to be

a comprehensive description of the problems. But the editorial staff hopes that we were able to identify the main trends and, at the same time, provide examples of typical violations of the human right to a favorable environment.

Translated by Sofya Tairova.

<sup>1</sup>[http://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_GDP\\_%28nominal%29\\_per\\_capita](http://en.wikipedia.org/wiki/List_of_countries_by_GDP_%28nominal%29_per_capita).

<sup>2</sup>Indicators of Sustainable Development. Framework and Methodologies. United Nations, New York, Third Edition, 2007; <http://www.un.org/esa/sustdev/natlinfo/indicators/guidelines.pdf>.

<sup>3</sup><http://info.worldbank.org/governance/wgi/index.asp>;

<http://gtmarket.ru/ratings/governance-matters/governance-matters-info>.

<sup>4</sup><http://www.transparencykazakhstan.org/content/8.html>.

<sup>5</sup>[http://www.transparency.org/policy\\_research/surveys\\_indices/cpi/2010/results](http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results).

<sup>6</sup>[http://www.fundforpeace.org/web/index.php?option=com\\_content&task=view&id=99&Itemid=140](http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=99&Itemid=140).

<sup>7</sup>Law “About National Security of the Republic of Kazakhstan,” article 5, paragraphs 1 and 5.

<sup>8</sup>Avenues for Improved Response to Environmental Offences in Kazakhstan. OECD, 2009, p.5, <http://www.oecd.org/dataoecd/2/20/42072582.pdf>.

**In order to enable foreign readers to understand terms they will encounter in the *Herald's* articles, a brief glossary is given below.**

**Akim:** a representative of the President and government of the Republic of Kazakhstan who heads a local executive body called an Akimat; the term may refer to leadership on either the local (city or district) or oblast (provincial) level.

**Akimat:** a local executive body led by an Akim.

**“Kazgidromet”:** the Republic-wide Government Enterprise “Kazgidromet,” of the Ministry of Environmental Protection, is Kazakhstan’s national hydro-meteorological service, which conducts government monitoring of the environment, particularly air monitoring.

**Region [District]:** a region is a small administrative or territorial unit within an oblast or city. In the 2011 *Herald*, the word “region” is translated as “district” when signifying an administrative unit (Ex: Medeu District Court of Almaty City). In the remaining cases, the word “region” is used to signify a small territory.

## **The Ecological Society Green Salvation**

The Ecological Society Green Salvation was founded in 1990 and is registered as a public organization of the city of Almaty. Green Salvation's goal is to protect the human right to a healthy and productive life in harmony with nature and to foster improvements to the socio-ecological situation in the Republic of Kazakhstan.

Green Salvation is guided by the following principles in its activities:

the universality, indivisibility, interdependence, and interconnection of all human rights;

the observance of the rights of the present and future generations to a healthy and productive life in harmony with nature;

the need for general environmental education and awareness;

the necessity of collaboration between government bodies, commercial entities, and the public in resolving environmental problems.

Membership in the organization is based on personal initiative and participation in specific projects. Green Salvation's staff is comprised of people from various professions who combine their organizational work with their professional activities. Honorary members and volunteers make a substantial contribution.

### **Main Activity Focus of the Ecological Society Green Salvation**

#### 1. Defending the Human Right to a Favorable Natural Environment

The organization defends human rights through pre-judicial and judicial methods, seeking the strict observance of national legislation and international agreements. Among the organization's most important activities are lawsuits concerning: the failure of "Kazatomprom" and various Departments of Statistics to present information; recognition of the invalidity of the state environmental assessment's conclusion for the project to construct a 110-kV high voltage power line in the Mountain Giant District; resumption of work of a Plant for Construction Materials and Structures; and the illegal reduction of the Sanitary Protection Zone of the Karachaganak Oil and Gas Condensate Field. On average, Green Salvation files eight lawsuits per year and conducts dozens of legal consultations.

In 2004 and 2007, it became necessary for Green Salvation to appeal to the Aarhus Convention's Compliance Committee. In one of the two appeal cases, the Committee acknowledged noncompliance with individual Convention statutes by the Republic of Kazakhstan and violations of citizens' rights to



participate in the decision-making process and to access to justice with regard to environmental concerns.

## 2. Participation in the Development of Environmental Protection Legislation

Green Salvation participated in the official discussions concerning the Law “On Protection of the Natural Environment in the Kazakh Soviet Socialist Republic” (1991) and the laws of the Republic of Kazakhstan “On Environmental Protection” (1997), “On Environmental Assessment” (1997), “On Specially Protected Natural Territories” (1997), “On Land” (2001), “On Tourist Activities in the Republic of Kazakhstan” (2001), the Forestry Code (2003), the Land Code (2003) and others. In 2002, at the request of the Committee for Environmental and Nature Management Issues of the Lower House of Parliament, Green Salvation conducted a public environmental assessment of the draft Forestry Code (2003).

## 3. Environmental Awareness and Education

Since 1995, the organization has published the *Green Salvation Herald*, with a supplement in English, since 2000. The Bulletin’s thematic issues are related to environmental protection legislation and protection of human rights, environmental education, development of a network of national parks, and other socio-ecological problems. Special courses are developed and textbooks are published for students. To date, more than 30 publications have been produced in Russian, Kazakh and English.

Green Salvation collaborates with the domestic and foreign press, participates in television and radio programs, and organizes exhibitions.

In 2002, Green Salvation began a video program. The films include: “Legacy of the Nuclear Age,” “The Riches of Nature—In Whose Hands?,” “Passengers in Forgotten Way Stations,” “Canyon” and “The Earth Does Not Belong to Man...” Several of these films have been awarded prizes at international festivals.

In 2007, Green Salvation began the video discussion club “Green Lens.”

In 2002, Green Salvation launched a website in Russian and English.

## 4. Environmental Campaigns

Green Salvation actively participates in various public campaigns to ensure the integrity of the environmental system of protected natural territories. Green Salvation collaborates with the Ile-Alatau State National Nature Park administration. Video monitoring is regularly conducted on the park’s territory. Together with the environmental club “Berendei” (Kapchagai),

Green Salvation has repeatedly conducted summer environmental schools in the Park.

Green Salvation actively participated in the anti-nuclear campaign conducted by public organizations opposing a plan to import and bury radioactive waste from other countries in the Republic of Kazakhstan. In 2009, the organization successfully conducted a campaign against the construction of high voltage power lines through the territories of the Charyn and Altyn-Emel national parks. Green Salvation also participated in the following international campaigns: International Right to Know, Publish What You Pay, and Caspian Revenue Watch.

Green Salvation actively monitors projects financed by development banks and the activities of transnational corporations that have an impact on the environment.

#### 5. Collection of Data on the Environmental Situation in the Republic of Kazakhstan

Green Salvation has brought together various documentary, reference, and training materials in its electronic databases, library, and video collection. These materials are used by activists from nongovernmental organizations, specialists, teachers, college students and schoolchildren.

**The Ecological Society Green Salvation welcomes collaboration  
for the sake of the Earth!**

#### **Our address:**

050000, Republic of Kazakhstan, Almaty,

Shagabutdinova Street 58, apt. 28.

Telephone/fax: +7(727) 253-62-56.

E-mail: [grsalmati@gmail.com](mailto:grsalmati@gmail.com).

Website: [www.greensalvation.org](http://www.greensalvation.org).

Find Green Salvation on Facebook.

## The Question of Compliance with the Aarhus Convention in the Republic of Kazakhstan

Svetlana Katorcha, Sergey Kuratov, Nataliya Medvedeva,  
Svetlana Spatar

In summer 2011, the Fourth Meeting of the Parties to the Aarhus Convention will take place in Chisinau, Republic of Moldova. The Parties prepared reports about their compliance with the Convention to be presented during the Meeting. In our opinion, the document prepared by the Republic of Kazakhstan does not reflect some important aspects. Moreover, the document does not answer many questions that needed to be covered in accordance with the reporting requirements of the Convention's bodies.

### How the National Report was Prepared

The report was prepared by the Ministry of Environmental Protection (MEP), which used its own data and materials from a number of governmental bodies and some non-governmental organizations. In accordance with the recommendations of the Aarhus Convention's Compliance Committee, the report preparation shall involve the public from the earliest stages, in order to establish effective participation in the process.

The Committee announced a schedule for the report preparation, according to which the consultations on the report's content should have been in July-August; preparation of the first draft in August-September; discussion of the draft for 30-60 days from September till the beginning of November; and preparation of the final version of the report from the beginning of November till the beginning of December 2010.<sup>1</sup> On December 8, 2010, the final version of the report had to be submitted to the Secretariat of the Convention and presented to the public.

But the Ministry violated the schedule. No consultations on the report's content were held. The draft report was published for an open public discussion on the websites of the Aarhus Center of the Republic of Kazakhstan and the Ministry of Environmental Protection<sup>2</sup> only on October 28 and November 3, 2010, respectively. The document was published in an unfinished version; some of the sections were missing or were incomplete.

All of this significantly decreased the opportunity for effective public participation; thus, a widespread discussion of the report did not take place. On November 5, 2010, in his interview to *Caravan*,<sup>3</sup> Vice Minister of Environmental Protection M. Turmagambetov responded to the question of the national report's preparation: "Anyone willing to express their opinion

regarding any arguable points related to environmental protection will be given such an opportunity during the consultations and “round tables” with the public and non-governmental organizations, which will be conducted for a month in Kazakhstan.”

So, how was the draft report discussed? On November 4, 2010, in the office of the Aarhus Convention in the city of Atyrau, a discussion was held with the following representatives of non-governmental organizations in western Kazakhstan: G.Chernova, M.Khakimov, A.Shakhnazaryan and N.Ivaskevich. A resident of the city of Almaty, A.Tonkobayeva, also prepared personal remarks. The Ecological Society Green Salvation sent brief comments to the Ministry of Environmental Protection and to the Aarhus Center. In essence, this was the extent of the discussions, as the Ministry of Environmental Protection later confirmed.<sup>4</sup>

Since the report preparation schedule was violated, only one, final version of the document was presented, likely explaining the public’s passivity on this issue. Any comments had to be submitted to the Ministry before November 19, leaving people only 22 days to become acquainted with the document—totaling over 50 pages—and to submit their comments. The passivity is also partially explained by the public’s mistrust of governmental authorities who grossly violate the provisions of the Aarhus Convention, and the unclear position of the Convention’s bodies towards Kazakhstan, which does not follow the requirements of the international agreement.

Official statements about the discussion of the draft report were not published. The report was submitted to the Secretariat, and it was unclear how public comments were considered, as the final version of the document was not published in either January or February 2011.

As such, Green Salvation submitted an inquiry to the MEP with a request to provide the final version of the report and information about the results of its discussion. No answer ensued; therefore, the Ecological Society had to address a court regarding the inquiry.

In the beginning of March 2011, the Ecological Society initiated a civil lawsuit. On March 28, we finally received the text of the report and an answer to our request from the MEP, signed by the Vice Minister of Environmental Protection M.Turmagambetov. He confirmed that widespread discussion of the document had not taken place.<sup>5</sup>

At approximately the same time, the report was published on the MEP website. In the final version of the report, despite the requirement to include a description of how the consultations with the public were held, such information is missing. According to the Aarhus Center, there are more than 200 environmental organizations in Kazakhstan. So, how do the

Convention's bodies know which of those organizations participated in the report preparation, and how?

There is one more important aspect. Kazakhstan needs to prepare a special report for the Fourth Meeting of the Parties on the execution of decision III/6c of the Third Meeting of the Parties "Compliance by Kazakhstan with its Obligations under the Convention."<sup>6</sup> However, the official bodies have not said anything about it, and it is unknown if this document has been prepared or not.

### General Remarks

In the "Guidance on Reporting Requirements," prepared by the Compliance Committee in 2007, it is stipulated that the reports must contain more information about practical measures undertaken for compliance with the provisions of the Convention.<sup>7</sup>

Despite this fact, the Republic of Kazakhstan's report had the same shortcomings as the previous one. For example, the authors paid too much attention to analyzing the country's legislation, even in the sections (V, IX, and XVII) that should have described practical measures undertaken by state authorities. The description of the obstacles encountered during the realization of specific provisions of the Convention (sections IV, VIII, XII, XVI, XXV, and XXIX) had the same shortcomings. There were hardly any statistical data, specific facts, or answers to the given questions.

The deficiencies of current legislation are rightly pointed out by the authors as some of the main obstacles to complying with the Aarhus Convention. Based on many years of monitoring environmental legislation, the Ecological Society Green Salvation has repeatedly raised the issue of insufficiencies in the legislation.<sup>8</sup>

However, there are many other obstacles that were not mentioned in the report. The authors do not take into consideration cases of non-observance of the laws and the Convention, cases of inaction by public authorities, numerous violations of the law committed by bodies of justice, etc. The report fails to include numerous facts regarding gross violations of environmental norms by economic players of all levels, including transnational corporations.

The report also speaks to contradictions between different legal acts. However, it is not noted that, in a number of cases, these contradictions can be overcome by the **correct** application of the Law "About Normative Legal Acts" and the Aarhus Convention. The country not only lacks universal application of the Convention, but many public authorities and judges are still not familiar with this document, which the report authors do not mention.

Even the requirements of article 4, paragraph 3 of the Constitution, which states that international agreements supersede the laws of the Republic of

Kazakhstan, and their provisions and norms shall be applied directly, are not always followed in real life. A vivid example is the Supreme Court's decision No. 3-36/2009 from July 15, 2009, on the Green Salvation lawsuit concerning acknowledgement of a government decree to be invalid. It says: "Analysis of the provisions of article 8 of the Aarhus Convention indicates that the Convention's provisions are characterized as **recommendations**."<sup>9</sup>

Disuse and misuse of the Convention basically excludes it from legal practice. Therefore, the courts are still guided by the outdated legal norms, which lead to violations of the rights provided to citizens by this international agreement.

The Aarhus Convention stipulates "that **every person has the right to live** in an environment adequate for their health and well-being" and "that adequate protection of the environment is essential to human well-being and the enjoyment of **basic human rights**, including **the right to life itself**." Article 26 of the expired Constitution of 1993 also stated that "every citizen of the Republic of Kazakhstan **has the right** to a natural environment that is favorable for life and health." However, this article was not included in the current Constitution of 1995. It is only stated that "the government has a **goal** of protecting an environment that is favorable for life and human health" (article 31). It does not guarantee, but sets it as a "goal," which is not an acknowledgement of the right to a favorable environment.

Despite this fact, the report authors try to present the situation regarding environmental rights in a more attractive way: "The main law of the Republic of Kazakhstan—the Constitution—prioritizes the safety of people, including environmental safety."<sup>10</sup> With this casual interpretation of the Constitution, the authors do not provide any references to specific articles.

Having excluded from the Constitution the rights of citizens to a favorable environment, the lawmakers, nevertheless, oblige citizens to "protect nature and preserve the natural resources" (article 38).

The report authors point out a significant amount of mistakes, inaccuracies, and contradictions not only in the Environmental Code, but also in other normative legal acts. However, they do not specify what actions were undertaken by the public authorities to eliminate these faults. They do not explain why numerous amendments are introduced into the legislation every year. Instead of explanation, they simply state that "the flaws and contradictions revealed in the legislation of the Republic of Kazakhstan during the preparation of this National report can serve as a good basis for public participation in the lawmaking process, in accordance with the article 8 of the Aarhus Convention."

This statement contradicts what the authors write in section XXV: "The public's right to participation in the lawmaking process in the Republic of

Kazakhstan is declaratively stated in legislation... Practice shows that today in Kazakhstan many aspects of public participation in the lawmaking process are not secured by legislation... As a result, the public often **does not have a real opportunity to participate in the lawmaking process**, except for in specific individual cases.”<sup>11</sup> We fully agree with the authors’ conclusion on this point.

In 2008, the Ecological Society Green Salvation organized a public campaign against the introduction of amendments to the Law “On Specially Protected Natural Territories.” Under the pretext of tourism development, such amendments have created favorable conditions for further plundering and destruction of our country’s most precious natural territories.

Exercising the rights stipulated by the Constitution and the Aarhus Convention, the Ecological Society Green Salvation prepared an open letter to the President, Senate, Security Council, General Public Prosecutor’s Office, Ministry of Environmental Protection, Ministry of Agriculture, and the Ministry of Agriculture’s Forestry and Game Committee. Our organization called on the public to support this campaign and 113 individuals and legal entities signed the open letter. But none of our proposals were considered, and we were not given any reasons why they were declined.

Numerous contradictions in the Environmental Code, pointed out by the report authors, prove the immaturity of this law and the fact that there was not any vital need for its adoption. Basically, the law was developed in order to weaken the current national environmental legislation, under the guise that the legislation needed to be brought in compliance with international norms. Thus, the Aarhus Convention was used as a cover for another manipulation of the law.

On the one hand, the authors do not deny that the recognition and securing of citizens’ rights in legislation has not been followed by the creation of any legal implementation instruments. On the other hand, the authors do not explain why the government was inactive for so many years.

It should be noted that the report contains factual mistakes and inaccuracies, which also demonstrates how governmental authorities regard compliance with international obligations.<sup>12</sup>

### **Compliance with Article 4 of the Aarhus Convention**

In section VII of the report, unreasonably close attention is paid to legal issues, but at the same time, important issues such as the realization of the right to access to information are missing. No analysis is made about the quality of the information, nothing is said about the lack of operational data or the fact that the public is often provided with invalid and incomplete data.

For example, an Informational Bulletin about environmental conditions

in the Republic of Kazakhstan is published monthly on the websites of the Ministry of Environmental Protection and the Aarhus Center in the section on “The Environmental Situation.” However, it only includes general information for the month. For example, none of the official websites have any **current** data by cities about atmospheric pollution. On the website of the Center of Hydro-Meteorological Monitoring of Almaty City, the data about atmospheric air conditions is published with a delay of several days.<sup>13</sup>

The report authors note that “some commercial, non-governmental, and governmental enterprises provide environmental information to a limited number of governmental organs and to the majority of other governmental and non-governmental customers at very high rates.”<sup>14</sup> But they do not indicate any specific organizations; therefore, we will give a few examples. The Republic-wide government enterprise “Kazgidromet” conducts monitoring of environmental conditions, but does not publish all of the information that is needed by the public. The rest of the information is provided for a fee. For example, information about atmospheric conditions in the city of Almaty costs approximately 80,000 tenge (about 530 U.S. dollars)! The general public and even small entrepreneurs are only able to afford these services in extremely urgent cases.

Independent assessment is very expensive as well, and citizens who need to protect their rights cannot afford to use these services. Information provided by the legal firms mentioned by the report authors—“Yurist,” “Adilet,” and “YurInfo” company<sup>15</sup>—is not cheap either. The cost for partial access to the legal library starts at 1,000 dollars per year.

In addition, the rates for mailing services, the Internet, telephone connections, etc. are continually rising. Thus, the high price of information “legally” limits access to it.

The report does not say anything about compliance with the time limits for providing information, and there are not any statistical data.

Analysis of the correspondence of the Ecological Society Green Salvation, which sends more than one hundred and fifty requests to governmental authorities per year, led to the following findings. In 2010, 173 letters were sent out. Replies were received for only 123 (71%). The other 50 requests (29%) were ignored. In two cases, due to this failure to provide information, the Ecological Society had to appeal to the court. But even the court does not guarantee that complete information will be provided.

The public funds “Medialife” (city of Karaganda) and “Decenta” (city of Pavlodar), with support from the Soros-Kazakhstan Fund, conducted research on access to information provided by governmental authorities. The collected statistical data is presented in the book “Realization of the Right to Access to Information in Kazakhstan.” As part of the research, a number of requests



were sent out to governmental authorities at the state level. “52 requests (62% of the total number of the requests) were replied... 20 requests (27%) received no answer. In other cases, the information was incomplete.” Requests to the local authorities show even worse results. “... There were 1,038 requests made. Replies were received for 476 requests, which is 45.9% of the total number of requests... The remaining 562 requests (54.1%) received no answer.”<sup>16</sup>

The question of concealment of information deserves special attention. For example, on the MEP website, there is information about projects that were going through the state environmental assessment. But this information is not accessible to the public. The data is only available to the Ministry’s employees. This was confirmed by a representative of the MEP Committee of Environmental Regulation and Control in letter No. 10-02-22/1013, dated March 18, 2011.

The concealment of information takes place in many commercial enterprises, including those that are founded and operated with a support of international financial institutions, the World Trade Organization, and transnational corporations.

For example, in accordance with the Environmental Code, data on industrial environmental control is public information, and companies must provide public access to it.<sup>17</sup> But some firms do not follow this requirement.

Green Salvation addressed requests to eight companies, and only three of them provided information promptly: “Ulba Metallurgical Plant” JSC, “Ust-Kamenogorsk Heating Network” JSC, and “AES Ust-Kamenogorsk Power Station” JSC.

It took several months to conduct negotiations with “Karachaganak Petroleum Operating B.V.” and “Tengizchevroil” LLP. And “AES Soginsk Power Plant” LLP, “Kazzinc” Ltd., and “Ust-Kamenogorsk Titanium Magnesium Plant” JSC completely ignored our appeals.<sup>18</sup>

### **Compliance with Article 6**

In 2005, the Second Meeting of the Parties made decision II/5a “Compliance by Kazakhstan with its Obligations under the Aarhus Convention.” It was noted that there were no established mechanisms for public participation in the decision-making process in the country. Despite the opinion of the Meeting of the Parties and criticism from non-governmental organizations, specialists, and some citizens, governmental authorities did nothing in order to create necessary mechanisms for realization of the public right to participation in the decision-making process.

The report authors agree with the claims that public participation in the decision-making process is severely limited.<sup>19</sup> Yet they do not explain why the authorities do not offer solutions to this problem or try to determine the

reasons and prevent the possible negative consequences. And this should have been done because even the limited rights are very poorly observed.

Public hearings are organized with gross violations. Often, they are conducted by the project developers after a decision is made by the governmental authorities, without timely notification of the public, without prepared project documentation, and without consideration of public opinion. It should be noted that the report does not mention any cases in which public opinion was ignored, while in reality, this happens all the time.<sup>20</sup>

The inadequate notification of interested persons about upcoming public hearings and falsification of the hearings are unabashed violations of the right to information. The authorities do not react adequately to these violations; they simply do nothing. For example, Kazakhstani newspapers publish messages such as these:

1. “‘KIEL-PLUS’ Ltd. finished developing the draft Environmental Impact Assessment (EIA) for an industrial site at 212-v Rayimbek Avenue. The project is submitted for consideration to the Department of Natural Resources and Regulation of Natural Resources Use” (*Kazakhstanskaya Pravda*, No. 351, dated December 25, 2010). This message does not clearly explain if public hearings are going to be held, when, or where.

2. “Notification. Draft EIA for ‘Aircraft repair factory No. 405’ JSC is submitted for environmental expertise in the city of Almaty. For any questions, call 257-23-43” (*Vechernyi Almaty*, No. 142, dated November 11, 2010). It is unclear what types of questions are being solicited, from whom, and whether or not public hearings are going to be held.

3. “‘Madi’ Firm Ltd. submits a draft EIA for a site located at 247 Seyfullin Avenue, Turksib district, city of Almaty, for a state environmental assessment. Telephone number for suggestions and comments: 239-11-20” (*Vechernyi Almaty*, No. 20, dated February 10, 2011). This announcement does not make clear what is meant by “suggestions and comments,” and whether or not the public hearings are going to be held.

Unfortunately, hundreds of similar announcements are published in the final pages of newspapers in fine print. Can these notifications be considered an adequate, timely, and effective way of informing the public?! This only confirms that businessmen and authorities treat the public hearings as another formality.

Of course, this manner of informing the public about planned economic activity causes citizens to express their indignation. Nevertheless, even the courts consider such announcements to be written in accordance with all the requirements of national legislation and the Aarhus Convention.

At the same time, the developers of EIAs, who have licenses to conduct such activities,<sup>21</sup> obediently execute the will of their customers. And the

control organs compliantly follow instructions from the local authorities in power.

Thus, there are numerous ways to remove the public from the decision-making process.

The report authors do not speak to the serious obstacles that result from changes in legislation, the passing of subordinate legal acts, and the unjustified separation of functions between specialized nature protection agencies and executive organs.

This last issue has become such a serious problem that it was even mentioned in the report “Avenues for Improved Response to Environmental Offences in Kazakhstan,” published by the Organization for Economic Co-operation and Development in 2009: “The role of sub-national institutions is gradually changing from the limited involvement to date. The increasing involvement of such bodies in regulation and enforcement is very important as it presents an opportunity to closely engage with local communities. However, a poorly orchestrated decentralisation creates the **danger of institutional over-fragmentation and inconsistency, as well as raises concerns over the capacity of sub-national bodies to undertake roles given to them.**”<sup>22</sup>

The “Rules for Conducting Public Hearings” which is a subordinate act, should be mentioned. The rules were adopted on May 7, 2007, by Decree No. 135-p made by the Minister of Environmental Protection. The terms used in the Rules either misrepresent or contradict the terms used in the Environmental Code, the Law “On Architectural, Urban Planning and Construction Activities in the Republic of Kazakhstan,” and the Aarhus Convention.

For example, according to the Rules, “the public concerned—is the public that is **influenced by the realization of decisions** related to the environment.” In other words, the decision is already supposed to have been made! And if, during the implementation of the decision, public interests are influenced, then the public can start defending their rights.

In accordance with article 2, paragraph 5 of the Aarhus Convention, “the public concerned” means the public **affected or likely to be affected by, or having an interest in, the environmental decision-making.**”

So, why were the Rules adopted? Most likely, to impede effective public participation in the decision-making process and not allow direct application of the provisions of the Aarhus Convention.

For the same reason, paragraph 7 of decision II/5a has still not been implemented. The paragraph contains the following recommendations to the Republic of Kazakhstan:

“(a) Adopt and implement regulations setting out more precise public participation procedures covering the full range of activities subject to article 6 of the Convention, without in any way reducing existing rights of public participation;

(b) Ensure that public authorities at all levels, including the municipal level, are fully aware of their obligations to facilitate public participation; and

(c) Consider introducing stronger measures to prevent any construction work going ahead prior to the completion of the corresponding permitting process with the required level of public participation.”

The report does not cover in any way the fact that decision II/5a has not been implemented.

The facts above demonstrate that governmental authorities, through manipulation of legislation, are trying to infringe upon the public rights provided by the Convention. The authorities and courts governed by the subordinate acts basically remove the public from the decision-making process.

### **Compliance with Article 9**

As was admitted by the Vice Minister of Environmental Protection, M. Turmagambetov, in his interview to *Caravan* newspaper, the realization of the right to access to justice—one of the three main elements of the Aarhus Convention—has yet to be secured in Kazakhstan.<sup>23</sup> But in the section “Obstacles Encountered in the Implementation of Article 9,” the report authors do not mention the main points that impede the realization of rights, such as:

- addressing the court is significantly complicated by numerous manipulations of the norms of procedural law used by the judges;
- the principle of equity of the parties in court proceedings is violated;
- the principle of the independence of judges is violated—the courts are under pressure from the executive authorities in power;
- the execution of court decisions is not guaranteed and is often delayed or only partially executed.<sup>24</sup>

Nothing is mentioned about corruption, which is one of the most serious factors counteracting compliance with the Convention in Kazakhstan. Meanwhile, prominent foreign sources indicate that corruption has penetrated the main governmental structures of Kazakhstan. According to the U.S. Department of State’s 2010 Human Rights Report for Kazakhstan, “The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials frequently engaged in corrupt practices with impunity. Corruption was widespread in the executive branch, various law enforcement agencies, local government administrations, the education system, and the judiciary. The Ministry of Internal Affairs, Financial Police, the KNB, and the Disciplinary State Service Commission are responsible for combating corruption. Opposition leaders and human rights NGOs accused the government of rampant corruption. According to the

World Bank's Worldwide Governance Indicators, corruption in the country was a problem."<sup>25</sup>

On April 14, 2011, events took place that confirmed the extreme corruption in the judicial system. As instructed by the President, a plenary session of the Senate of the Parliament of Kazakhstan considered the question of the dismissal of six Supreme Court judges. The General Public Prosecutor's Office initiated criminal cases against them as suspects in corruption.<sup>26</sup> Because of this event, the chairman of the Supreme Court resigned from his position.

Another obstacle for access to justice is the fact that changes and amendments are continually introduced, which cause contradictions and reflect on the quality of the legislation. This was mentioned back in 2001 in the Message of the Constitutional Council of the Republic of Kazakhstan "About Conditions of the Constitutional Legality in the Republic": "...Current legislation does not always develop systematically, the connection between its different areas is violated, and the stability of the laws is not secured. There are many problems related to the quality of the laws: contradiction between norms; the unjustly frequent introduction of changes; adoption of secondary, rather than primary laws; legislative procrastination; and imperfections of juridical techniques."<sup>27</sup>

Sometimes, the laws contain mutually exclusive norms. For example, article 21 of the active Law "On the Use of Atomic Energy" says that "the citizens of the Republic of Kazakhstan, public entities and organizations have a right:

- to receive information...about the safety of atomic energy sites **that are planned** for construction, under construction, operating, and under closure...;
- to conduct a public environmental assessment of the **planning documents** and control over the radiation indicators...."

Article 12 of another active law, the Law "On State Secrets" says "data regarding the **plans**, construction, exploitation, or safety provisions of atomic energy sites" are governmental secrets.

Similar contradictions are seen in other normative legal acts as well. This proves that for many years there was no significant improvement in environmental legislation. Meanwhile, numerous corrections and additions were introduced into the laws during the period from 2008 to 2011.<sup>28</sup>

Page five of the report states: "Financial questions are not an obstacle in the implementation of the Aarhus Convention." But the facts demonstrate the opposite.

The high expenses of addressing a court are a significant obstacle for citizens and public organizations seeking to protect their rights. One has to pay a state duty and pay for lawyer services, which are prohibitively expensive

in Kazakhstan. If a case is to be considered in another city, one has to cover travel and accommodation expenses, and so on. In addition, the legal costs are not always reimbursed even after a court decision is made. Therefore, a person with an average level of income typically cannot afford to submit an appeal to a court because of financial reasons.

Section XXIX of the report is one of the few containing statistical data. The data is likely taken from the website of the Supreme Court, but there are no references to the sources.<sup>29</sup> "...The statistical data does not contain indicators for the lawsuits initiated by the public before the current year. For 9 months of 2010, overall, there were 485 appeals from individuals and legal entities in matters related to environmental protection, including 13 appeals from individuals and 159—from public environmental organizations. In total, 159 lawsuits were satisfied by the courts, including 2 lawsuits from individuals and 53 lawsuits from environmental public organizations."

It would be nice to see more specific statistical data though, for example, in relation to what kind of violations led to the lawsuits, by which organizations, and how the lawsuits were distributed by region. Specifically, statistical data reflecting execution of the court decisions should have been provided, because the poor execution of court decisions is one of the most acute problems.

In conclusion, we would like to draw attention to the report authors' statement from page 9, which is **not true**: "To date, there are no documented cases of members of the public being persecuted because they sought to protect their rights in accordance with the Convention."

There are many examples (including examples from the practice of the Ecological Society Green Salvation) when people have been subjected to direct and indirect pressure to force them to refuse protection of their rights.<sup>30</sup>

## Conclusions

After the Environmental Code was signed in the beginning of 2007, official bodies stated several times that the Code includes all the requirements of the Convention. The report mentions the measures undertaken in order to comply with decision II/5a prepared by MEP: "A political, legislative, and institutional basis has been created in the Republic of Kazakhstan for the active participation of all of society in the resolution of statewide issues, including environmental issues. Thus, **all conditions** for the proper provision of access to **all components** of the Aarhus Convention have been created in the Republic."<sup>31</sup> Such optimistic conclusions appeared in the report prepared for the Third Meeting of the Parties to the Aarhus Convention as well: "At the present time, in general, all conditions for the proper provision of access to **all components** of the Convention have been created on the legislative level in the Republic of Kazakhstan...."<sup>32</sup>

The authors show less optimism in the report prepared to the Fourth Meeting of the Parties. As was mentioned above, they admit the imperfection of the Environmental Code and a number of other laws, contradictions between their provisions, and other serious faults in normative legal acts.

But despite the fact that the latest report is written in a more critical manner, in comparison to the last report, no real measures have been undertaken by the MEP, or by the government. The concealment of information and removal of citizens from participation in the decision-making process cause new and more acute conflict situations. As an ironic coincidence, a confrontation between developers and local residents of one of the micro-districts of the city of Pavlodar has been underway for several months already.<sup>33</sup> The conflict has been caused by the illegal construction of a 110kV high-voltage power line. Construction of a similar power line in the city of Almaty was one of the factors leading to an appeal to the Aarhus Convention's Compliance Committee and to the adoption of the decision II/5a, which has still not been implemented.

The report authors do not even try to analyze what has occurred as a result of non-compliance with the Convention and what consequences can be expected in future.

In our opinion, the contents of the reports prepared for the Third and the Fourth Meetings of the Parties to the Aarhus Convention are proof of the failure and incapacity by the state to comply with the requirements of the international agreements over many years.

1. At the moment, it can be stated that the period of independence led to a very difficult environmental legacy. Thousands of people live in Sanitary Protection Zones and consume poor quality food. Fertile lands and populated areas are turning into dumpsters, forests are being destroyed, water reservoirs are continually being polluted, and the process of desertification is accelerating.

2. The public rights to access to information, access to the decision-making process in environmental issues, and access to justice are recognized in Kazakhstan. However, there are no mechanisms for their realization.

3. Realizing that compliance with the noted rights will require the development of democratic institutions in the country, the authorities in power do everything possible to impede these processes.

4. One more reason for non-compliance with the Convention is that the dominating political groups are intentionally weakening and destroying the state apparatus. This is confirmed by Kazakhstan's ranking in the Fund for Peace's Failed States Index.<sup>34</sup>

We believe that the Convention bodies must make an unbiased evaluation of the implementation of the Convention's requirements by the parties. This is not a violation of their sovereign rights. Otherwise, silent support

to authoritative and non-democratic regimes takes place. Measures must be developed to influence countries that fail to comply with the international obligations on a systematic basis, but not in the form of their exclusion as members of the Convention.

Translated by Sofya Tairova.

---

<sup>1</sup> Guidance on Reporting Requirements:

[http://www.unece.org/env/documents/2007/pp/ece\\_mp\\_pp\\_wg\\_1\\_2007\\_L\\_4\\_e.pdf](http://www.unece.org/env/documents/2007/pp/ece_mp_pp_wg_1_2007_L_4_e.pdf);

<http://www.unece.org/env/pp/Reports.htm>.

<sup>2</sup> <http://www.eco.gov.kz>; <http://www.aarhus.kz>.

<sup>3</sup> A.Nurtazin. **There is no money for clean air.** *Caravan*, No. 45 dated on November 5, 2010, <http://www.caravan.kz/article/7369>.

<sup>4</sup> Letter of the MEP dated March 18, 2011 No. 03-02-12/563-i.

<sup>5</sup> Ibid.

<sup>6</sup> Adopted at the Third Meeting of the Parties held in Riga, June 11-13, 2008, <http://www.unece.org/env/pp/mop3/mop3.doc.htm>.

<sup>7</sup> Guidance on Reporting Requirements, paragraphs 32-34:

[http://www.unece.org/env/documents/2007/pp/ece\\_mp\\_pp\\_wg\\_1\\_2007\\_L\\_4\\_e.pdf](http://www.unece.org/env/documents/2007/pp/ece_mp_pp_wg_1_2007_L_4_e.pdf).

<sup>8</sup> For the Third Meeting of the Parties to the Aarhus Convention. Almaty, 2008;

<http://www.greensalvation.org/uploads/Publish/3thmeeting27052008.pdf>.

<sup>9</sup> <http://www.greensalvation.org/uploads/Docs/20090715reshenieVS.pdf>.

<sup>10</sup> Second National Report on Compliance with the Aarhus Convention, p.18;

<http://www.eco.gov.kz/sotrudnichestvo/index.php>.

<sup>11</sup> Ibid., p.40.

<sup>12</sup> For example, the authors refer to expired normative acts. The 2006 Law “About Protection of People’s Health” (p.32) was cancelled by the 2009 Code “About People’s Health and Healthcare System.” The “Sanitary and Epidemiological Requirements for the Development of Industrial Sites” (p.42) were cancelled by order of the acting Minister of Public Health of Kazakhstan on October 6, 2010, No.795.

<sup>13</sup> <http://www.almatymeteo.kz/?page=1797>.

<sup>14</sup> Second National Report..., p.16.

<sup>15</sup> Ibid., p.17.

<sup>16</sup> Realization of the Right on Access to Information in Kazakhstan. Astana, 2008, p.56, p.64; <http://www.medialife.kz/html/kniga>.

<sup>17</sup> The Environmental Code, article 130.

<sup>18</sup> <http://www.greensalvation.org/index.php?page=prokuratura-ecoinfo>.

<sup>19</sup> Second National Report ..., pp.33-34.

<sup>20</sup> <http://www.greensalvation.org/en/index.php?page=human-rights>.

<sup>21</sup> The Environmental Code, article 38.

<sup>22</sup> Avenues for Improved Response to Environmental Offences in Kazakhstan. OECD, 2009, p.15,

<http://www.oecd.org/dataoecd/2/20/42072582.pdf>.

<sup>23</sup> A.Nurtazin. **There is no money for clean air.** *Caravan*, No. 45, November 5, 2010, <http://www.caravan.kz/article/7369>.

<sup>24</sup> National Action Plan for human rights in the Republic of Kazakhstan for 2009-2012. – Astana, 2009, pp.126-127, [http://medialaw.asia/files/plan\\_ru.pdf](http://medialaw.asia/files/plan_ru.pdf).



<sup>25</sup> 2010 Human Rights Report: Kazakhstan, U.S. Department of State, April 8, 2011, p.25; <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154481.htm>.

<sup>26</sup> The Voice of Republic Newspaper, No. 14 (190), April 15, 2011; <http://www.inform.kz/rus/article/2370743>;

[http://www.zakon.kz/top\\_news/209607-predsdatelju-verkhovnogo-suda.html](http://www.zakon.kz/top_news/209607-predsdatelju-verkhovnogo-suda.html).

<sup>27</sup> The Message of the Constitutional Council of the Republic of Kazakhstan “About Conditions of the Constitutional Legality in the Republic”, March 24, 2001.

<sup>28</sup> See also: The Evolution of the Republic of Kazakhstan’s Environmental Protection Legislation. *Green Salvation Herald* 2011. – Almaty, 2011.

<sup>29</sup> [http://www.supcourt.kz/system/inter.php?SECTION\\_ID=631&ELEMENT\\_ID=19273](http://www.supcourt.kz/system/inter.php?SECTION_ID=631&ELEMENT_ID=19273).

<sup>30</sup> Passengers in Forgotten Way Stations. *Green Salvation Herald* 2003-2004. – Almaty, 2004, p.62,

<http://www.greensalvation.org/uploads/Publish/Herald%202003-2004+.pdf>.

<sup>31</sup> Compliance by Kazakhstan with its Obligations under the Convention and Its Implementation of Decision II/5a of the Meeting of the Parties, p.18,

<http://www.eco.gov.kz/docs/orhus2.pdf>;

<http://www.greensalvation.org/en/index.php?page=Arhus-en>.

<sup>32</sup> First National Report on Compliance with the Aarhus Convention, p.26,

<http://www.eco.gov.kz/sotrudnichestvo/index.php>.

<sup>33</sup> <http://www.gorodpavlodar.kz/News.html&file=article&sid=17246>.

<sup>34</sup> [http://www.fundforpeace.org/web/index.php?option=com\\_content&task=view&id=99&Itemid=140](http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=99&Itemid=140).

## Universal Periodic Review of the Republic of Kazakhstan, 2010 Submission of Earthjustice\*

Office of the High Commissioner for Human Rights  
Palais Wilson, 52 rue des Paquis, CH-1201 Geneva, Switzerland

8 September 2009\*\*

### I. Summary

1. Recalling UN Geneva Assembly Resolution 60/251, adopted on 15 March 2006, UN Human Rights Council Resolution 5/1 adopted on 18 June 2007, and Decision 6/102 adopted on 27 September 2007, and in accordance with the Information Note for NGOs regarding the Universal Periodic Review mechanism (8 October 2007), Earthjustice respectfully submits to the Human Rights Council the following information regarding human rights in the Republic of Kazakhstan for its universal review.

2. The Information and Guidelines for Relevant Stakeholders regarding the Universal Periodic Review mechanism, issued July 1, 2008, states that stakeholders may draw attention to specific conclusions and recommendations made by international and regional human rights mechanisms, and refer to the extent of implementation of those recommendations by the State under universal review. Kazakhstan is a party to the UN Economic Commission for Europe's (UNECE) Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, also known as the Aarhus Convention. The Aarhus Committee is an important instrument for the protection of human rights in Europe and Central Asia, including the rights of **access to information**, to **public participation** and of **access to justice**, along with the right to a **healthy and sustainable environment**. Government decision-making without public participation, access to information or access to justice can result in environmental damage

---

\* Earthjustice is a non-profit public interest law firm dedicated to protecting the magnificent places, natural resources, and wildlife of this earth, and to defending the right of all people to a healthy environment. The organization founded in 1971 as the Sierra Club Legal Defense Fund. From 1997, the organization called Earthjustice. Headquarters are located in Oakland, CA, <http://www.earthjustice.org>.

\*\* This report was prepared in 2009 in connection with the preparation of the Republic of Kazakhstan's 2010 report.

that, in turn, can infringe upon many international human rights, including the rights to: **health; work; an adequate standard of living; a means of subsistence; property; adequate housing; freedom of movement and residence; and culture and traditional knowledge**; as well as the rights of **indigenous peoples, including the right to self-determination**.

3. In considering public submissions related to situations in Kazakhstan, the Aarhus Convention Compliance Committee (Committee) has documented Kazakhstan's human rights violations over the last five years. In June 2008, the third Meeting of the Parties (MOP) of the Aarhus Convention found that the Government of Kazakhstan is not in full compliance with the principles of the Convention. We respectfully request that the Human Rights Council: 1) take into consideration the concerns of the Committee with regard to Kazakhstan; 2) urge Kazakhstan to ensure its public has access to information, avenues for participation, and access to justice; and 3) encourage Kazakhstan to accept assistance, including assistance from the Committee, to remedy the infringement of human rights resulting from a lack of access to justice.

4. Via this submission, Earthjustice seeks to contribute to the protection of human rights in Kazakhstan, including all the rights, described above, that are protected through the Aarhus Convention's guarantees of participatory rights.

## II. Background

5. Kazakhstan has ratified several of the most prominent human rights instruments, including the Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the International Convention on the Elimination of All Forms of Racial Discrimination; and the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child. Kazakhstan also ratified without reservation the Aarhus Convention on 11 January 2001.

6. The Fourth Ministerial Conference in the "Environment for Europe" process adopted the Aarhus Convention in 1998, in order to guarantee that the human right to participate in government extends to activities affecting the environment. This agreement requires national governments to guarantee three core rights: the right to information about the state of the environment and activities that might harm it; the right to participate in decisions about potentially harmful activities; and the right to access to justice if the activities

violate environmental or other laws. The Aarhus Convention grants citizens of signatory states enforceable rights and is monitored by a Compliance Committee, similar to the Human Rights Treaty Bodies, to which members of the public may communicate concerns regarding a Party's compliance with the Convention.

7. The Aarhus Convention by its scope is not just an environmental law treaty. It links the fields of the environment and human rights. Because the Aarhus Convention grants enforceable rights and imposes on Parties and public authorities obligations regarding access to information, public participation and access to justice, it is often considered in the list of human rights instruments. To date, the Compliance Committee has received 41 communications from the public and one submission by a Party against another. Five of these communications were about Kazakhstan, of which three were considered as admissible.

### **III. Human Rights Violations**

#### **Public Communications to the Aarhus Compliance Committee about the State of Human Rights in Kazakhstan**

8. On 7 February 2004, Green Salvation, a Kazakh non-governmental organization, submitted a communication to the Committee alleging that Kazakhstan was out of compliance with Aarhus' principles of access to information and access to justice. The communicant claimed that it requested information regarding a proposed draft concerning the import and disposal of radioactive waste prepared by the state-owned nuclear company ("Kazatomprom"), but the communicant's request was never answered. The information was purportedly about a proposal to import and dispose of foreign radioactive waste in Kazakhstan. According to the communicant, subsequent appeal procedures in courts of various jurisdictions failed to meet the Aarhus Convention's requirements on access to justice.<sup>1</sup>

9. On 17 March 2004, Green Salvation submitted a communication to the Committee alleging that Kazakhstan failed to provide an adequate public participation procedure during the permitting process for the construction of high-voltage overhead electric power lines in the Gornyi Gigant district in Almaty, Kazakhstan. According to the communicant, various court proceedings had thus far failed to resolve the matter.<sup>2</sup>

10. On 3 September 2004, three inhabitants of Almaty, Kazakhstan, submitted a communication to the Committee alleging Kazakhstan's non-compliance with regard to access to justice. According to the communicants, Almaty Sanitary-Epidemiological Department and Almaty City Territorial Department on Environmental Protection failed to enforce domestic environmental law in the operation of an industrial facility storing cement and coal and producing cement-based materials. The communicants asserted that a court repeatedly failed to consider a part of a lawsuit against the public authorities aimed at remedying this situation.<sup>3</sup> Communicants allege violations of their rights to access to administrative or judicial review procedures, guaranteed under article 9, paragraph 3 of the Convention.

### **Human Rights Violations as Documented by the Aarhus Convention Compliance Committee and Aarhus Meeting of the Parties**

11. The Committee followed its normal information gathering procedures and organized hearings at its sixth meeting (15-17 December 2004) on the communication of Green Salvation and at its eighth meeting (22-24 May 2005) on the communication of the three inhabitants of Almaty. Representatives of the Government of Kazakhstan and of the communicants participated in these hearings and provided additional information.

12. The Committee found that Kazakhstan was not in compliance with the Convention in all three cases. In particular, the Committee found that:

1) Kazakhstan had not ensured the public had access to information. It had failed to implement Aarhus Convention's provisions on access to information in the bodies performing public functions. Also, it had not provided clear regulation or guidance to these bodies with regard to these obligations.

2) Kazakhstan had not fully complied with the procedures necessary to ensure real participation by the public concerned with these matters.

3) Kazakhstan had not provided access to justice. Its lengthy judicial review procedure and denial of standing to the non-governmental organization in a lawsuit on access to environmental information was not in compliance with the Convention. It also failed to provide effective remedies when a public authority failed to enforce environmental legislation. In addition, it failed to ensure that the courts properly notified the parties of the time and place of hearings and of the adopted decisions.

13. The second MOP was held in Almaty, Kazakhstan on 25-27 May 2005, and endorsed the position of the Committee in Decision II/5a.<sup>4</sup> It invited the

Government of Kazakhstan to submit to the Compliance Committee a strategy, including a time schedule, for transposing the Convention's provisions into national law. The MOP also requested that Kazakhstan develop practical mechanisms and implement legislation establishing clear procedures for training on the Guidelines on Handling Public Requests for Environmental Information to all public officials in relevant public positions at various levels of the administration.

14. In the follow-up process in early 2006, the Government of Kazakhstan submitted to the Committee the draft strategy referred to in Decision II/5a. The draft strategy focused primarily on the draft Environmental Code, which would include some of the legislation and provisions requested by the Committee, and included several capacity-building measures.

15. The Government of Kazakhstan also submitted a report on the measures taken to implement the recommendations of Decision II/5a in February 2008. The report outlined a number of legislative and capacity-building measures undertaken by the Party. With regard to the recommendation concerning the development of the implementation strategy, the report stated that the adoption of the Environmental Code achieved most of the goals set out in the draft strategy.

16. The third MOP, held from 11 to 13 June 2008 in Riga, took note of the progress made by the Party in Decision III/6c.<sup>5</sup> The MOP reviewed the implementation of Decision II/5a, especially with regard to the relevant legislative and regulatory developments. It noted progress in Kazakhstan's detailed procedures for access to information and public participation in decision-making, as well as the provisions of the new Environmental Code that further facilitates access to justice. It also took note of the relevant capacity-building initiatives for the judiciary and other legal professionals initiated by the Supreme Court of Kazakhstan.

17. Nevertheless, the third MOP found that the Government of Kazakhstan has not yet achieved full compliance with regard to access to justice. In particular, it is concerned that the public will not have the ability to appeal a decision or bring public authorities to court if they fail to act.

#### **IV. Conclusions and Recommendations**

18. Kazakhstan's failure to be in full compliance with the Aarhus Convention affects Kazakhstani's human rights to access to justice, participation and

information. These rights are essential to the protection of a number of other rights, including, but not limited to, the rights to life, health, water, work, culture, development, information, participation, shelter and housing, and the rights of indigenous peoples.

19. Because one of the objectives of the UPR is to encourage “full cooperation and engagement with the Council, other human rights bodies and the Office of the United Nations High Commissioner for Human Rights,”<sup>6</sup> Earthjustice urges the Human Rights Council in its review of Kazakhstan to take into consideration the concerns of both the Aarhus Convention Compliance Committee and Meeting of the Parties. In addition, we urge the Human Rights Council to recognize that Kazakhstan’s infringement of the rights of access to justice has broad consequences for the rights and freedom of the people of Kazakhstan.

20. While Kazakhstan has made considerable progress in incorporation the Aarhus Convention’s principles into its laws and has communicated this progress with Aarhus’s MOP and Compliance Committee, it is important to monitor the application of these principles in practice and to encourage Kazakhstan to further its work on ensuring these rights.

21. In accordance with Decision III/6c of the Meeting of the Parties of the Aarhus Convention, Earthjustice recommends the Human Rights Council request the Government of Kazakhstan to 1) thoroughly identify how judicial and other review authorities can provide adequate and effective remedies in the course of judicial review and, in doing so, ensure the appropriate involvement of the public; 2) strengthen and effectively implement legislation and detailed procedures to provide the public with effective means of participation in decision-making, taking into account public comments; and 3) ensure that governmental activities are not carried out prior to the completion of a permitting process that includes real and effective public participation.

Respectfully Submitted, Martin Wagner,  
Managing Attorney International Program, Earthjustice.

Published with the permission of Earthjustice.

<sup>1</sup>ECE/MP.PP/C.1/2005/2/Add.1 (11 March 2005).

<sup>2</sup>ECE/MP.PP/C.1/2005/2/Add.2 (14 March 2005).

<sup>3</sup>ECE/MP.PP/C.1/2006/4/Add.1 (28 July 2006).

<sup>4</sup>ECE/MP.PP/2005/2/Add.7 (13 June 2005).

<sup>5</sup>ECE/MP.PP/2008/2/Add.11 (26 Sept. 2008).

<sup>6</sup>A/HRC/RES/5/1.

# Violations of the Human Right to a Favorable Environment in the Republic of Kazakhstan

Svetlana Katorcha, Sergey Kuratov, Nataliya Medvedeva,  
Alexander Shitov

The experience of the Ecological Society Green Salvation and other non-profit organizations cannot sufficiently represent the full picture of violations of the human right to a favorable environment in Kazakhstan. But, in our opinion, this experience is enough to characterize typical violations and their primary causes.

## 1. Imperfections in Legislation Regulating Environmental Protection, Natural Resource Use, and Access to Justice in Environmental Matters

*“... it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law.”*

Universal Declaration of Human Rights, Preamble

The legislation of the Republic of Kazakhstan still contains numerous controversies and discrepancies with regards to the requirements of international law, in particular, with the Aarhus Convention.

1.1. The most significant imperfections of environmental legislation are as follows:

- a mechanism for public participation in the decision-making process has not been developed. It has only been declared in the Environmental Code (articles 13-14);

- a procedure to take into account public opinion has not been determined;
- there are a number of statements that either impede, or do not allow state authorities from being held accountable for their inaction.

For example, according to the Environmental Code (article 117, paragraph 1), authorities performing a state environmental assessment “**have the right to:**

- 7) **file court lawsuits** to limit, suspend, and ban economic or other types of activities performed in violation of the legislation of the Republic of Kazakhstan; ...

- 9) determine or participate in determining the amount of damage to the environment as a result of violation of the Republic of Kazakhstan’s environmental legislation, issue directions about reimbursement for damages, and **file lawsuits in the court.**”



But according to article 118, this is **not included in their official job obligations!** Such “imperfections” in the laws cause serious problems.

Firstly, considering that according to the Environmental Code (article 114), “the state environmental control is performed in: 1) compliance with environmental legislation,” it is obvious that when a violation of law is observed, the state authorities are not obliged to file lawsuits to the court!

Secondly, authorities cannot be sued for their inaction. This contradicts article 3, paragraph 1 and article 9, paragraphs 2 and 3 of the Aarhus Convention.

Thirdly, because the law does not clearly define how authorities shall apply their designated rights, in reality it sets the stage for various violations of the law.

1.2. Public participation in a referendum, as one of the forms of participation in the decision-making process, is stipulated in article 13, paragraph 1, sub-paragraph 5 of the Environmental Code. But the mechanism for organizing a referendum is complicated and undemocratic, as determined by the Constitutional Law of the Republic of Kazakhstan, dated November 2, 1995, “About the State Referendum.” The right to organize a referendum belongs exclusively to the president.

1.3. Legislation does not guarantee that citizens will receive fair benefits from the preservation and sustainable use of natural resources (primarily, national natural resources, including mineral resources, forests, water reservoirs, etc.) that have cultural, ecological, educational, health, recreational, and spiritual purposes, of those that have benefit as a means of subsistence.

1.4. The current legislation states that it is necessary to account for the total impact of anthropogenic factors on the environment, but in reality this requirement is not applied due to insufficiencies in legislation.

1.5. In accordance with the Aarhus Convention, each participating party guarantees the public the right to participate in the decision-making process related to the environment. But the legislation of Kazakhstan does not stipulate accountability charges for impeding the public’s participation in this process.

1.6. According to article 48 of the Environmental Code, the responsibilities of the Ministry of Environmental Protection, particularly in the area of environmental assessment, were partially given to local executive authorities. This led to a situation in which the local executive authorities, which are economic entities, were given the right to perform state environmental assessments of their own projects.

1.7. Article 393 of the Civil Procedural Code (CPC) stipulates preliminary hearings for a complaint for review. This is a legalized obstacle preventing a complaint for review to be heard by the judges of the Review Board.

1.8. Article 280 of the CPC allows a 3-month period in which it is possible

to dispute the actions (inactions) of the authorities in power. Without proper notification to the public about the decisions made by the authorities, this statement often poses a serious obstacle in protecting citizens' rights.

## 2. Violation of International and National Legislation

*"Everyone has the right to take part in the government of his country, directly or through freely chosen representatives."*

Universal Declaration of Human Rights, article 21

Public authorities allow massive violations of the provisions of environmental protection conventions and national legislation. As a result of the decisions and actions made by the authorities and private entrepreneurs, people are often subjected to various forms of discrimination.

### 2.1. Violation of the right to a favorable environment.

For example, a large number of people are forced to live in the sanitary protection zones of polluting enterprises. In a number of cities in Kazakhstan, levels of air pollution are many times higher than the permissible concentration (Almaty, Ust-Kamenogorsk, Ridder, and others). In most cases, public authorities not only fail to take any action, but openly defend the offenders of the law. One of the basic principles of the Republic of Kazakhstan's environmental legislation (article 5, paragraph 15 of the Environmental Code)—the presumption of environmental risk from planned economic or other activity—is almost never applied. Rather, the principle that any industrial activity is safe is in effect.

2.2. The right to timely access to accurate and complete information is violated.

For example, information collected by governmental authorities is neither complete, nor prompt. Often, authorities conceal information and it is only possible to obtain information through court proceedings. In some cases, the fee charged by the authorities to access the information is much higher than the "reasonable amount" stipulated by the Aarhus Convention (article 4, paragraph 8). The cost of independent assessments of water, soil, and air quality performed by licensed non-governmental bodies is too high and unaffordable to most people. There have been cases in which independent specialists have been persecuted for collecting environmental data. At the local level, authorities are not able to identify all varieties of soil, water, and air pollutants due to insufficient funding. Therefore, they have to limit their research to collecting the information provided by the polluting enterprises, which creates a biased representation of the environmental pollution situation.

2.3. The right to participate in the decision-making process is violated.

The public is either not involved in the decision-making process at all, or only involved as a formality when a decision has already been made, instead of “early public participation, when all options are open and effective public participation can take place” (Aarhus Convention, article 6, paragraph 4).

2.4. With the consent of the Ministry of Environmental Protection and its territorial divisions, project developers reduce public participation only to public hearings, which in turn are conducted as a formality. Often, the public is completely removed from the decision-making process, based on paragraph 4 of the Rules for Conducting Public Hearings, which states that “public hearings are held for projects that can directly impact the environment and people’s health.”

Such wording contradicts the Aarhus Convention, the Environmental Code, and the Law “On Architectural, Urban Planning and Construction Activities in the Republic of Kazakhstan.”

2.5. Rights to participate in the discussion of draft regulatory and legislative acts related to environmental protection and acts that can have a significant impact on the environment are violated. Public discussions are held as a formality or are not conducted at all.

2.6. Provisions of the Environmental Code (articles 41, 47, and 57) about public participation in Environmental Impact Assessments and Environmental Assessments are violated. At best, public opinion is made known, but not taken into account when making decisions.

**In general, public influence on the decision-making process is insignificant and ineffective.<sup>1</sup>**

2.7. Members of the public who exercise their rights in accordance with the provisions of the Aarhus Convention continue to be persecuted and harassed by governmental officials and businessmen, in violation of article 3, paragraph 8 of the Convention.

2.8. People’s property is impacted by the pollution of the land, air, water, and vegetation, as pollution negatively influences their economic activity and leads to property damages. Small private owners are most susceptible to this type of discrimination. The principle of equality of property owners’ rights is violated.<sup>2</sup>

2.9. The “polluter pays” principle almost never works. As a result, large enterprises, especially extraction and refining companies, impair the welfare of people who are forced to bear the environmental costs.

2.10. Due to corruption, polluting enterprises are able to avoid proper control by the government. Moreover, corruption makes it possible to easily obtain permits for the implementation of various projects in blatant violation of Kazakhstan’s regulations.

2.11. The principle of freedom of speech is violated. A significant portion of the media refuses to publish materials related to the human rights violations by state authorities. There is, in fact, a hidden censorship for certain types of environmental information.

2.12. People's right not to be deliberately evicted from their homes and land because of decisions or actions affecting the environment is violated.

Violations occur regarding people's right to effective participation in decision-making and negotiation processes related to their eviction, and if evicted, the right to timely and adequate compensation and/or appropriate and satisfactory housing or land.

For example, starting in 2005, Almaty citizens residing in the area between Al-Farabi, Rozybakiyev, Kozhabekova and Gagarin streets were facing eviction from their homes and apartments. The people were facing the fact that the land on which they had been living had been confiscated for state needs. People were not notified in advance about the planned construction development, provided complete information, or allowed access to the decision-making process on the issues related to the environment. As a result, the residents had to initiate a hunger strike to draw the authorities' attention to the fact that their rights were being blatantly violated.

2.13. The right to use national natural resources is violated.

For example, land plots in nature reserves and national parks are illegally privatized. As a result, these territories are significantly restricted for traveling, subjected to unauthorized waste dumps and illegal construction development, suffer from rampant poaching and crime, and become deadly dangerous for people.

2.14. Rights to the highest achievable health standards, free from environmental harm, are violated.

2.15. Rights to safe and healthy food and water are violated.

For example, in the city of Almaty, the systems regulating the water protection strips<sup>3</sup> are almost systematically violated. Despite a strict ban, the land in the water protection strips is being illegally privatized and misused. Household and construction waste is being dumped in the water protection strips.

2.16. Violations occur in regards to the rights to an environment necessary to adequately meet the needs of the present generations without compromising the rights of future generations to satisfy their needs in a fair manner.

For example, the over-exploitation and depletion of natural resources—water, mineral resources, and biological resources—is taking place.

2.17. Residents' right to access to justice in environmental matters is violated (see below).

### 3. Typical Obstacles to Access to Justice

*“All are equal before the law and are entitled without any discrimination to equal protection of the law.”*

Universal Declaration of Human Rights, article 7

In addition to the imperfections in legislation and poor compliance with the laws, there are other causes of human rights violations: the poor organization of the justice bodies, corruption, the low professional level of the court and the prosecutor's office staff. Unfortunately, in the past few years, violations of this nature have become frequent and typical.

3.1. When filing lawsuits to the courts, legal entities, including non-governmental organizations, must attach copies of all registration documents, certified by a notary. If this is not done, the courts return the lawsuits to the claimants. This requirement is against the law because the courts are entitled to certify the copies of claimant's original documents themselves. The legal entities have the right to appeal against the court's determination about returning the documents. But this requires additional time, which delays consideration of the case itself.

3.2. Lawsuits need to be accompanied by a note from an address bureau confirming the defendant's place of residence. The address bureau issues such notes only by court request. The court does not accept materials without a note from the address bureau. It is vicious cycle.

3.3. The most frequent violations of civil procedural norms.

By taking a long time to determine jurisdiction of a case and whether or not to accept it for consideration, the courts violate the timeframes established by the law and delay the whole process (in our experience, for up to nine months<sup>4</sup>).

Judges make the claimants send out notifications themselves and at their own expense, explaining that the courts lack financial means.

The court notifications are delivered with lengthy delays, sometimes even after the court hearings.

Court hearings do not start on time when judges are late.

Even when representatives of defending public authorities are absent from the court for no serious reason, judges do not take any measures to bring these representatives into respect for the court. As a result, consideration of a case is artificially delayed.

Representatives of defending public authorities do not show up in court even after a legal ruling is made by the judges.<sup>5</sup>

During court hearings, judges are called out for meetings and other events. As a result, the hearings are postponed.

The principle of equality of the parties in a court procedure is violated.

The minutes from court hearings are not kept in compliance with the CPC and are not issued on time. The minutes are written by judges who slant the content in favor of the decision. In this situation, claimants have to file appeals for review without being able to familiarize themselves with the case and the minutes.

Claimants are not always informed about the date and time of court hearings, and therefore, the decisions are made in their absence.

Judges violate the requirement of article 229 of the CPC to announce a brief decision immediately after court hearings and issue a court decision within five days.

Timelines established by the law for the execution of court documents are not met.

3.4. Judges have poor knowledge of environmental legislation and international conventions (the incompetence of judges leads to prolonged court procedures).

3.5. Judges allow themselves free interpretation of legislation.

3.6. Judges go over the limits of lawsuits' demands, violating the interests of claimants.

3.7. Courts remove state authorities and the prosecutor's office from the list of defendants.

3.8. The high level of corruption in the state bodies and courts brings serious doubts about the independence of the judges and impartiality of the decisions made. Even judges who are caught engaging in bribery retain their positions or work as lawyers.

3.9. The principle of the independence of judges is violated. When considering a case, they consult with their supervisors in higher instances.

3.10. It takes a very long time to reimburse claimants for court costs, and sometimes they are not reimbursed at all.

3.11. Court decisions are not executed on time, and sometimes only after numerous claims or a court's decision about the inaction of a law enforcement officer.

3.12. Law enforcement officers do not possess the technical means (reliable vehicles, photo cameras, etc.), which leads to the prolonged execution of court decisions.

3.13. When executing court decisions affecting the state authorities, law enforcement officers try not to apply prescribed legal charges, as they do not want to spoil their relationships with those higher up in the system.

The actions of the prosecutor's office do not always support the rights of citizens to access to justice.

3.14. The law does not require the prosecutor to be present in court for consideration of environmental cases, although almost all these lawsuits are filed to protect the rights and lawful interests of citizens. Therefore, the prosecutor takes part in the process at his/her discretion.

Absence during the court hearings prevents the prosecutor from objectively evaluating the parties' arguments and the correctness of the judges' application of the norms of material and procedural law.

3.15. It is required that a prosecutor participate in the consideration of lawsuits on actions/inactions of authorities in power and lawsuits in which a state authority is listed as a defendant. But the prosecutor is not always present at the court hearings or may participate in the process passively, only as an observer.

3.16. During court proceedings, a prosecutor often switches sides between the parties.

3.17. If a prosecutor issues an objection, it can be later revoked without any reason. But usually, the prosecutor does not take measures to appeal against an illegal decision.

The public prosecutor's office loses its ability to significantly influence the decision-making process in courts.

#### **4. Conclusion**

The main reasons for the numerous violations of human rights to a favorable environment are:

- the lack of state environmental policy;
- economic policy that is aimed at depleting natural resources;
- the acute decrease in the efficiency of the state apparatus, in particular, environmental protection bodies;<sup>6</sup> the state authorities have practically withdrawn from resolving environmental problems;
- the reduction of the Parliament's role in resolving environmental issues and managing state property;<sup>7</sup>
- the excessive and uncontrolled powers of the local executive bodies in the area of natural resource management;
- the imperfection of legislation, and the failure to comply with international and national legislation;
- the lack of effective mechanisms of control, misuse of authority, and thriving corruption;<sup>8</sup>
- the emergence of groups, including representatives of legislative, law enforcement, executive, and financial branches, that aim to extract maximum profits;
- the low level of professionalism of the state authorities' staff, in particular, justice bodies;

- the negative influence of transnational corporations on the environmental situation in the country.

The overwhelming majority of people in Kazakhstan cannot realize their rights to a favorable environment, and cannot protect themselves against actions that threaten their life, health, and well-being.

Among the major consequences of the violation of the right to a favorable environment are a deteriorating quality of life and an increase in poverty and sickness rates among the population.

### Attachment

Our experience allows us to determine the types of human rights violations most commonly reported by citizens.

1. The start-up of industrial enterprises and other facilities in violation of legislation, including the requirements about sanitary protection zones. As a result, residences and even whole communities find themselves inside sanitary protection zones.

2. The systematic pollution of the air, water, and soil (significantly surpassing the maximum permitted concentrations), which causes serious damage to the health of the population, primarily children.

3. The unauthorized occupation of land and illegal construction development leading to violation of people's rights.

4. The organization of illegal waste dumps.

5. The illegal limitation of access to natural resources, in particular, on the territory of national parks.

6. The restriction of access to information.

7. The clearing of trees.

8. The inadequate utilization of financial means allocated for the resolution of environmental problems.

Translated by Sofya Tairova.

<sup>1</sup> T.Ten. **Dust to the Eyes, Mercury Currency.** *Caravan*, No. 34, August 21, 2009, <http://www.caravan.kz/article/13795>.

<sup>2</sup> G.Vologodskaya. **Got Enough.** *Caravan*, No. 43, October 23, 2009, <http://www.caravan.kz/article/2458>.

<sup>3</sup> Water protection strips are strips of land along the shores of rivers and other bodies of water that are categorically banned from privatization.

<sup>4</sup> In 2003, the Ecological Society Green Salvation filed a lawsuit about the National Atomic Company "Kazatomprom's" failure to provide information. It took four months for the case's jurisdiction to be determined. The Aarhus Convention's Compliance Committee acknowledged that this was a violation of article 9, paragraph 1 of the Convention. In particular, in the conclusions and recommendations on the public statement ACCC/C/2004/01, it is stated: "21. The Convention, in



its article 9, paragraph 1, requires the Parties to ensure that any procedure for appealing failure to access information is expeditious. However, as the time and number of determinations with regard to jurisdiction in this case demonstrate, there appears to be lack of regulations providing clear guidance to the judiciary as to the meaning of an expeditious procedure in cases related to access to information.”

<sup>5</sup> During court hearings on the lawsuit about the inaction of state authorities, which had led to the formation of an illegal waste dump (city of Almaty, 2007), a judge had to issue a legal ruling to the juridical department of the Akimat (mayor’s office), in an attempt to make its representatives to show up to the court with proper documentation.

<sup>6</sup> For more details:

[http://www.foreignpolicy.com/articles/2009/06/22/2009\\_failed\\_states\\_index\\_interactive\\_map\\_and\\_rankings](http://www.foreignpolicy.com/articles/2009/06/22/2009_failed_states_index_interactive_map_and_rankings).

<sup>7</sup> For more details: Law of the Kazakh SSR dated June 18, 1991 “On Protection of the Natural Environment in the Kazakh SSR”, article 9.

<sup>8</sup> For more details: <http://www.transparencykazakhstan.org/content/8.html>.

## **Legal Practice of the Ecological Society Green Salvation**

Svetlana Katorcha, Sergey Kuratov, and Nataliya Medvedeva

Following the Second Meeting of the Parties to the Aarhus Convention (May 2005), the Ecological Society Green Salvation continued to defend in the courts the rights of citizens to access to information, participation in decision-making processes and access to justice in environmental matters.

In our opinion, the experience gained by our organization can be interesting to other non-profit organizations, lawyers, and people who are determined to defend their rights. We hope that our defeats and victories will help others to avoid mistakes, develop appropriate strategies, and triumph in the struggle for a worthy life.

Every year, the organization has about 8 cases that are considered by courts of various instances. The present review contains information about the 18 most interesting cases from 2005 to 2010, from our point of view. For readers' convenience they are numbered and listed in chronological order.

Green Salvation's demands were fully satisfied in 7 cases, not satisfied in 9 cases, 1 case was not taken into consideration, and 1 case was still in the process of consideration at the moment of this review.

Among the satisfied cases, 3 cases are related to a failure to provide environmental information, 1 case is about claiming a normative act to be illegitimate, 1 case is related to inaction of public authorities, and 1 case is related to a failure to implement court decisions.

The selected cases demonstrate how the Convention and national legislation are being followed in the country and show the problems facing people who are seeking justice in the courts (also, see the article "Violations of the Human Right to a Favorable Environment in the Republic of Kazakhstan").

Our organization faces numerous violations of the norms of procedural and material law. The most common violations are as follows:

1. Judges use a procedure to determine the jurisdiction of a case in order to reject "unwanted" cases before the consideration process. In these cases, the determination of jurisdiction can take months. For example, the determination of jurisdiction for case No. 11 on the inaction of the government took 9 months, for case No. 16 regarding the provision of inadequate information by public authorities, it took 8 months.

Nine of the 18 presented cases were initially rejected by the court for this reason. In 5 cases, the jurisdiction had been correctly determined by the organization initially, which was confirmed by the decisions of courts of higher instances. “Disputes about jurisdiction ... are solved by a court of a higher instance, a decision of which is final” (article 36, paragraph 4 of the Civil Procedural Code), but this provision is not followed by the courts of the first instance when the latter reject the lawsuits on the same basis. Such cases are also described in this review.

## 2. The time limits for consideration of the lawsuits are exceeded.

Due to the fact that all decisions related to the use of natural resources and environmental protection are undertaken by the state authorities, the latter were the objects of the complaints in all but two of the profiled lawsuits. In accordance with the Civil Procedural Code of the Republic of Kazakhstan (CPC), such cases are related to a category of special case proceedings (article 279) and shall be “considered by a court within one month” (article 281, paragraph 1), or “during ten days after the lawsuit was filed” (article 284, paragraph 2). But these provisions are rarely followed.

3. Decisions are being taken with consideration of who the defendant is and whose interests are involved (public authorities, persons of consequence, foreign companies). Moreover, the legal norms are often applied selectively.

For example, three lawsuits (No. 5, 6, and 12) to the statistics bodies were initiated because these bodies refused to present information about emissions of polluting compounds into the atmosphere (form 2-TP) by large industrial enterprises, mainly, foreign companies. In two cases, the lawsuits reached the Supreme Court. The demands of one of the lawsuits were denied, based on the Law “On State Statistics,” another lawsuit was fully satisfied, based on the same law and the Aarhus Convention. Thus, even the Supreme Court applies the norms of international and national legislation selectively when considering claims.

The rights and legal interests of Green Salvation and the citizens in the cases described in this review are defended by:

- Svetlana Philippovna Katorcha, Green Salvation’s lawyer;
- Alexander Anatolyevich Shitov, member of the Board of Lawyers of Eastern Kazakhstan Oblast;
- Pavel Mikhailovich Kochetkov, Director of the Western Kazakhstan branch office of the Kazakhstan International Bureau for Human Rights and Rule of Law.

## No. 1

### **Lawsuit to acknowledge as invalid the Second Conclusion of the State Environmental Assessment for construction of a 110 kV transmission power line on the territory of the Gorny Gigant micro-district and Ministry of Internal Affairs' quarters (city of Almaty).<sup>1</sup>**

In 2002, a high-voltage transmission power line was illegally constructed on the territory of the Gorny Gigant micro-district and the Ministry of Internal Affairs' quarters. Not attaining justice in Kazakhstan's courts, Green Salvation, together with local residents, addressed the Aarhus Convention's Compliance Committee.

Based on the decision of the Committee regarding communication ACCC/C/2004/02, Green Salvation again filed a lawsuit. On **April 27, 2005**, a lawsuit was filed on newly disclosed circumstances against the Almaty City Territorial Department of Environmental Protection (ACTDEP).

Violating the norms of the CPC, the review of the primary allegation began only on **October 7**, i.e. after a five-month delay.

On **October 10**, the court determined that the lawsuit demands were not to be satisfied. The court considered the decisions made for Kazakhstan by the Aarhus Convention's Compliance Committee, and the decisions of the Second Meeting of the Parties to the Convention not to be obligatory and **having only a recommendatory character**. Therefore, they were not considered as newly disclosed circumstances.

On **December 1**, Green Salvation sent an inquiry to the General Prosecutor requesting clarification on the procedures for applying the statutes of the Aarhus Convention in Kazakhstan.

In the response, received by Green Salvation on **December 21**, it was explained that the statutes of the Convention "**must be applied** on the territory of the Republic of Kazakhstan."

On **October 23, 2006**, the Supreme Court refused to review the case, admitting the determination of the court of the first instance to be correct.

The case consideration lasted for one year and a half.

## No. 2

### **Lawsuit contesting the legality of a normative-legal act.**

On February 28, 2004, the Ministry of Environmental Protection (MEP) approved the "Instructions for Conducting Environmental Impact Assessments for Planned Economic or Other Activities during the Development of Pre-Planning, Pre-Project and Project Documentation." The public did not participate in the discussion of this document. The Ministry believed that the Instructions helped the public to achieve its rights. Point 37 of the Instructions states that "consideration of public opinion is guaranteed ... as established in

active legislation....” Yet there is **no** legal act in Kazakhstan that guarantees consideration of public opinion or public participation in the decision-making process.

In order to realize the rights of the public, Green Salvation considered it was necessary to acknowledge the Instructions to be invalid, and develop a new legal act, in accordance with the requirements of the Aarhus Convention.

On **June 22, 2005**, Green Salvation and the Ecological Club “Biosphere” (Ridder) filed a lawsuit in Astana City Court, seeking acknowledgement that the Instructions were invalid and contradicted the current legislation.

On **July 14**, having reviewed the lawsuit, the Court acknowledged the Instructions as an invalid normative legal act, as they had not been published. Thus, for over a year and a half the Ministry had been citing a document that did not have legal force.

It was not until **August 26** when the Instructions were published in “The Legal Newspaper” without changes to the wording.

On **September 4**, following the publication of the Instructions, Green Salvation again filed a lawsuit to the Astana City Court to acknowledge the document’s invalidity, in connection with newly disclosed circumstances.

The Court decided not to accept the lawsuit. According to the Court, the publication of the Instructions does not qualify as newly disclosed circumstances.

Green Salvation and the Ecological Club “Biosphere” did not appeal this particular decision, as they had filed a lawsuit on the inactivity of the government and other state bodies, in other words, on non-compliance with an international agreement, the decisions of the Compliance Committee and the Second Meeting of the Parties to the Aarhus Convention.

See case No. 3.

### **No. 3**

#### **Lawsuit about inaction of the government and other state authorities in relation of their incompliance with an international agreement.**

On **November 2, 2005**, Green Salvation and the Ecological Club “Biosphere” (Ridder) addressed the Sary-Arka District Court of Astana City with a lawsuit regarding the inaction of the government and other state authorities in relation to their incompliance with an international agreement, decisions of the Aarhus Convention’s Compliance Committee and the Second Meeting of the Parties to the Aarhus Convention.

The court did not accept the lawsuit. The judge indicated that the lawsuit should be considered by the Specialized Interregional Economic Court (SIEC).

On **November 23**, the lawsuit was filed to the Specialized Interregional Economic Court of Astana City. The court refused to accept the lawsuit,

explaining that the case should be considered by the Sary-Arka District Court.

On **December 9**, the claimants addressed the Astana City Court with a claim to determine the case jurisdiction. The court determined that the lawsuit should be considered by the SIEC.

On **January 14, 2006**, the SIEC ignored the determination of the Astana City Court and, violating article 36, paragraph 4 of the CPC, for the second time made a decision to refuse to accept the lawsuit stating that “**incompliance of the government with the international agreement is not subject to consideration and resolution by the civil court proceedings.**”

The Appeal and Review Board on Civic Affairs of the Astana City Court refused to satisfy the complaint.

On **June 5**, the Supreme Court also determined the complaint for review to be unjustified, indicating that “the complaint lacks clear description of a violation or a threat of violation of rights, freedoms and lawful interests of the claimants.”

None of the juridical instances accepted the facts that human rights had been violated as a result of inaction by state authorities, even the cases which were recognized by the Aarhus Convention’s Compliance Committee.

For seven months, the public organizations tried to file the lawsuit in a court, but it was never accepted for consideration.

#### No. 4

##### **Lawsuit to declare invalid the conclusions of the 2003 and 2004 environmental assessments for Plant for Construction Materials and Structures No. 3 (PCMS-3), located in Almaty city.**

In 2004, citizens L.Gatina, A.Gatin, and L.Konyshkova submitted a claim to the Aarhus Convention’s Compliance Committee. The basis for the appeal (ACCC/C/2004/06) was the violation of their right to access to justice on environmental matters. The review of the claim began in May 2005. On **June 16, 2006**, the Committee determined that the government of the Republic of Kazakhstan did not comply with article 9, paragraphs 3 and 4. Thus, it was acknowledged for the third time that Kazakhstan did not comply with a number of provisions stated in the Aarhus Convention.<sup>2</sup>

At the same time, on **November 16, 2005**, at the request of Mrs. L.Gatina and Mr. A.Gatin, Green Salvation filed a lawsuit to the Medeu District Court against the Almaty City Territorial Department on Environmental Protection to recognize as invalid the conclusions of the state environmental assessments for the project to reconstruct the PCMS-3 (Since 2007, the PCMS-3 has been known as “Tsentr beton” Ltd.). The assessments were conducted without consideration of public opinion, violating national legislation and the Aarhus Convention.

On **January 18, 2006**, the Court decided to reject the lawsuit. The District Prosecutor appealed to the Court for satisfaction of the lawsuit demands. The Court ignored the claimants' statement that the national legislation and the norms of the Aarhus Convention were extremely violated during the environmental assessments. The Court disregarded both the opinion of the District Public Prosecutor and the explanation by the General Prosecutor about the Court's obligation to apply the Aarhus Convention's statutes.

On **January 18**, the District Public Prosecutor issued a protest against the Court's ruling, but on March 23, the protest was revoked.

The Appeal and Review Board on Civic Affairs of the Almaty City Court refused to satisfy the claims.

On **August 10**, the Supreme Court did not find basis to satisfy the complaint for review. Even the fact that the challenged assessments were conducted with the crucial violations of the national and international legislation was not taken into consideration. Practically, it was admitted that an enterprise can function without permission of the local authorities, without a sanitary-protection zone.

## No. 5

### **Lawsuit on the refusal of the Statistics Department of Western Kazakhstan Oblast to provide environmental information.**

The lawsuit demanded to recognize as illegal the actions of the Head of the Statistics Department of Western Kazakhstan Oblast, who refused to provide information about the emissions of polluting compounds to the atmosphere by the enterprise "Karachaganak Petroleum Operating, B.V.", and to require the defendant to provide Green Salvation with the requested information.

On **February 14, 2007**, a lawsuit in the interests of the citizens was filed to the Court of the City of Uralsk, and later to the Specialized Interregional Economic Court of Western Kazakhstan Oblast (SIEC).

On **May 7**, the SIEC refused to satisfy the lawsuit demands.

The Appeal and Review Board on Civic Affairs of the Western Kazakhstan Oblast Court retained the complaints without satisfaction.

In **December**, a complaint for review was filed with the Supreme Court's Review Board on Civic Affairs.

On **March 26, 2008**, the Board introduced a decision on the satisfaction of the complaint for review. The decision of the Specialized Interregional Economic Court of Western Kazakhstan Oblast and the ruling by the Board on Civic Affairs of Western Kazakhstan Oblast Court have been repealed.

The decision of the Supreme Court was based on the provisions of the Aarhus Convention.<sup>3</sup>

The decision entered into force.

On **April 29**, the Statistics Department of Western Kazakhstan Oblast provided the requested information.

The case, which should have been resolved within one month, lasted for over a year.

## **No. 6**

### **Lawsuit on the refusal of the Statistics Department of Karaganda Oblast to provide environmental information.**

The lawsuit demanded to recognize as illegal the actions of the Head of the Statistics Department of Karaganda Oblast, who refused to provide information regarding emissions of polluting matter into the atmosphere by “Mittal Steel Temirtau,” and to require the defendant to provide Green Salvation with the requested information.

The lawsuit was filed on **April 3, 2007** to the Specialized Interregional Economic Court of the City of Karaganda; and later, on **June 4**, to the Court of Kazybek bi District of Karaganda City. It took two months to determine the case’s jurisdiction.

On **July 23**, the Court of Kazybek bi District of Karaganda City refused to satisfy the lawsuit demands.

The decision was not appealed via an appeals procedure.

On **October 15**, the Review Board of Karaganda Oblast Court refused to file a complaint for review.

On **December 6**, the Supreme Court’s Review Board on Civic Affairs also refused to file a complaint for review.

Having taken into consideration only the Law “On State Statistics,” the court refused to satisfy the lawsuit demands, while not taking into account the provisions of the Aarhus Convention.

## **No. 7**

### **Lawsuit about the inaction of the state authorities, which led to the formation of an unsanctioned dump.**

An illegal dump was formed on the territory of the Ile-Alatau National Park, as a result of the construction of elite mansions in a vicinity of the Park. The reason for this violation was a lack of control from the responsible state authorities.

A lawsuit in the interests of Almaty citizens was filed on **May 16, 2007** to the Specialized Interregional Economic Court of Almaty City.

The court selectively determined the defendants from those listed in the lawsuit: the Akimat of Almaty City, and the Almaty City Territorial Department on Environmental Protection.

The lawsuit demands:

1. To recognize the failure on the part of the defendants to exercise



control over the actions of “Chimbulak Ltd.” to liquidate the unsanctioned dumping ground, as a result of which the dumping ground is damaging the environmental system of a specially protected natural territory.

2. To require “Chimbulak Ltd.” to reimburse the damage caused to the surrounding natural environment by recultivating the territory on which the unsanctioned dumping ground is situated.

3. To require the defendants to exercise control for the liquidation of the unsanctioned dumping ground in the area of the “Chimbulak” mountain ski resort.

More than 10 sessions were held prior to the court issuing a decision. The legal proceedings were dragged out because, in order to determine the land ownership and the territory’s administrative affiliation, the authorities needed to conduct a land assessment. For the systematic failure to appear in the court by a representative of the Akimat of Almaty City, the judge issued a court ruling to the Akimat.

The defendants systematically provided inadequate information about the case, which forced Green Salvation to conduct weekly photo surveys of the affected land plot. More than a hundred photographs were taken.

On **September 10**, the court issued a verdict on the satisfaction of the main demands of the lawsuit, requiring the defendants **to clean the territory in a ten-day period, in accordance with environmental protection legislation.**<sup>4</sup>

Due to the defendants’ failure to execute the court’s decision within the time specified, in **2008**, the Ecological Society filed a lawsuit against the Administrator of the Courts of Almaty City, and in **2009**, filed another lawsuit against the Committee of Court Administration under the Supreme Court (see cases No. 10 and No. 18).

As of the printing of the *Herald*, the dump had not been fully liquidated and the land restoration works had not been completed.

## No. 8

### **Lawsuit on refusal of “Tsentr beton” Ltd. to provide environmental information.**

The lawsuit demanded to recognize as illegal the actions of the director of “Tsentr beton” Ltd., who refused to provide information on industrial environmental control for the first quarter of the current year, and data on emissions monitoring and monitoring of the impact of “Tsentr beton” Ltd. on the health of the population. The lawsuit demanded to require the Director to provide the report data.

The lawsuit was filed together with local residents and in their interests on **August 2, 2007** in the Specialized Interregional Economic Court of Almaty

City; and then filed on **September 24** in Zhetisujski District Court No. 1 of Almaty City.

On **December 10**, Zhetisujski District Court No. 1 issued a judgment by default regarding the satisfaction of the lawsuit.

The judgment came into force.

The information was provided, but incompletely, on **March 10, 2008**.

### **No. 9**

#### **Lawsuit on the repeal of the decision by the Akimat of Almaty City on the allocation of a land plot in the water protection zone of the Yesentai River to be used in private construction.**

The Akimat of Almaty City granted a high-ranking official the right of private ownership over a land plot located within a water protection zone, which caused pollution of the Yesentai River.

The lawsuit was filed in the interests of local residents on **January 8, 2008** in the Specialized Interregional Economic Court of Almaty City, and then on **January 17** in Court No. 1 of Bostandykski District of Almaty City, and then on **February 1** in the Medeu District Court of Almaty City.

The lawsuit demands:

1. To recognize as illegal the decision of the Akimat of Almaty City to grant the right of private ownership of the land plot and a buy/sell agreement for this land plot, and to repeal them.
2. To recognize as illegal the State Act on the Right to Private Property on the land provided to “AlmatygorNPTSzem”, and repeal it.
3. To require the owners to remove all of the waste from the aforementioned land plot, located in the water protection zone, and to reimburse the damage caused to the land plot by recultivating the territory.

The case consideration was dragged on, due to the need to conduct an assessment of determination of the land lot's limits. The assessment confirmed that the land lot is partially situated within the water protection zone.

On **April 22**, the court issued a decision on the refusal to satisfy the lawsuit demands.

The Appeal and Review Board on Civic Affairs of Almaty City Court refused to satisfy the complaints.

On **July 31**, a complaint for review was filed to the Board on Civic Affairs of the Supreme Court.

On **September 25**, the Board refused to initiate a review procedure. Thus, the Supreme Court ignored provisions of the Water Code, and the construction norms and rules that ban private ownership and private construction on the lands located within the water protection zones.

### No. 10

**Lawsuit against the Administrator of the Courts of Almaty City for failing to implement the decision of the Specialized Interregional Economic Court of Almaty City regarding the liquidation of the unsanctioned dumping ground for construction and household waste by the “Chimbulak” mountain ski resort.**

The lawsuit demanded to recognize as an omission the failure of the Administrator of the Courts to implement the September 10, 2007 decision by the SIEC of Almaty City (see case No. 7), and to oblige the Administrator of the Courts to implement the decision, in accordance with the Law “On Executive Legal Proceedings.”

The lawsuit in the interest of Almaty residents was filed on **May 19, 2008** in the Specialized Interregional Economic Court of Almaty City.

On **May 23**, the SIEC refused to accept the lawsuit in connection with the court’s lack of jurisdiction.

On **June 9**, the lawsuit was filed in Court No. 1 of Bostandykski District of Almaty City.

On **June 11**, Court No. 1 of Bostandykski District refused to accept the lawsuit in connection with the court’s lack of jurisdiction.

On **June 20**, a private complaint was filed in Almaty City Court.

On **July 23**, the Board on Civic Affairs of Almaty City Court determined the jurisdiction of the Specialized Interregional Economic Court.

On **August 26**, the lawsuit was filed for a second time in the SIEC.

Only on **October 2**, the SIEC began to review the lawsuit.

On **October 21**, the SIEC of Almaty City made a decision on the satisfaction of the complaint.<sup>5</sup>

The decision entered into legal force.

In fact, the case consideration took less than 20 days, while the determination of the case’s jurisdiction, re-addressing the case, and other bureaucratic procedures took more than 4 months. The final decision on the case was taken by the initially addressed court.

### No. 11

**Lawsuit on the Government of Kazakhstan’s failure to act, which led to the violation of the rights and legal interests of citizens, and on acknowledging as invalid the conclusion of the Senior State Sanitary Inspector regarding the reduction of the sanitary protection zone (SPZ).**

As a result of the government’s failure to undertake measures to protect the rights and freedoms of citizens, some of the residents of Berezovka village (Western Kazakhstan Oblast) are forced to live in the sanitary protection

zone of a large oil extraction plant. The residents' demands to be resettled are ignored; their right to participate in the decision-making process and their right to a favorable environment are violated.

The lawsuit was submitted in the interests of the residents of the village of Berezovka on **June 19, 2008** in the Specialized Interregional Economic Court of Astana City.

The lawsuit demands:

1. To recognize that the Government's failure to take measures to protect the rights and freedoms of citizens, specifically to ensure the legality and safety of the residents of the village of Berezovka, who have had to live within the sanitary protection zone, is a violation of the rights of citizens to a healthy environment.

2. To recognize the Government's failure to control the activities of the ministries and other central and local executive bodies in regards to implementing laws and international agreements.

3. To recognize the Government's failure to comply with its obligations by committing violations to the provisions of the Aarhus Convention (articles 3.2, 3.3, 3.9, 4 and 6) and the 1997 Law "On Environmental Assessment" (articles 13, 14, 15.1, 16 and 36) when deciding to reduce the SPZ.

4. To recognize as invalid the conclusion of the Senior State Sanitary Inspector (No. 07-2, January 16, 2004) in the Addendum to the Draft "The Sanitary Protection Zone of the Karachaganak Oil and Gas Condensate Field" from December 25, 2003.

5. To require the Government, in accordance with legislation, to resolve the question of relocating the residents of the village of Berezovka to a safe, healthy location and to provide them with adequate housing, taking into account their opinions.

6. To require the Government to resolve the question of compensation for material and moral damages caused to the residents of the village of Berezovka.

On **June 23**, the SIEC refused to accept the lawsuit in connection with the court's lack of jurisdiction.

On **July 7**, the lawsuit was filed in Almaty District Court of Astana City.

On **August 5**, Almaty District Court of Astana City refused to accept the lawsuit in connection with the court's lack of jurisdiction.

On **September 29**, a complaint was filed to Astana City Court's Board on Civic Affairs.

On **December 11**, Astana City Court's Board on Civic Affairs issued a decision on the satisfaction of the complaint and directed the lawsuit to be reviewed by Almaty District Court of Astana City.

On **January 30, 2009**, the judge of Almaty District Court of Astana City

ignored the decision of the Board and determined that the case was not part of the court's jurisdiction.

On **March 12**, Astana City Court's Board on Civic Affairs considered the case for the second time and made a decision about filing the case to the SIEC of Astana. This was the court that the claimant addressed initially.

On **April 30**, the SIEC acknowledged as invalid the decision of the Senior State Sanitary Inspector dated January 16, 2004, related to an Addendum to the Draft "The Sanitary Protection Zone of the Karachaganak Oil and Gas Condensate Field." Thus, the 5-km sanitary protection zone was restored. Other lawsuit demands were left unsatisfied.

Astana City Court's Board on Civic Affairs refused to satisfy the claimants and defendants' appeals.

On **October 1**, a claim for review was filed to the Supreme Court's Review Board on Civic Affairs.

On **December 23, 2009**, the Supreme Court considered the claim for review and satisfied all points. The case was resent for new consideration to the SIEC.

On **January 13, 2010**, the SIEC of Astana made a decision to prepare for the court hearings.

On **March 5**, the court made a decision to involve third parties to participate in the court proceedings and to hold on-site court hearings in Berezovka village.

On **April 30**, the on-site court hearings took place in Berezovka village, Western Kazakhstan Oblast.

The **June 1** determination of the court "ceased ... the demands" towards one of the main defendants—the Senior State Sanitary Inspector.

On **June 1**, a decision was made. Without the claimant's agreement, the judge changed the lawsuit demands and replaced the defendants. This allowed him to make a decision that required "the local officials of the region, city, and oblast to solve the issue ... about resettlement of the residents of the village Berezovka who currently live within the limits of the sanitary protection zone." By this, he likely assumed the land lots of the farmers who live in Berezovka.

Only on **June 29** the decision was sent to the claimant by mail.

On **July 14**, an appeal was filed in Astana City Court.

On **September 15**, Astana City Court's Board on Civic Affairs considered the claim and left the decision of the SIEC without alteration.

On **October 11**, a cassation claim was filed to Astana City Court.

On **November 11**, the court considered the claim and rejected to satisfy its demands.

On **December 22**, an appeal was sent to the Supreme Court.

The case has been considered for more than two years already. It took 9

months to determine the case's jurisdiction. Astana City Court's Board on Civic Affairs made mutually exclusive decisions, while not requiring the courts of the first instance to follow directly its resolutions.<sup>6</sup>

**The case remains open.**

**No. 12**

**Lawsuit about the Statistics Department of Eastern Kazakhstan Oblast's failure to provide environmental information.**

The lawsuit demanded to recognize as illegal the limited access to information about atmospheric pollution of the city of Ust-Kamenogorsk by the large industrial enterprises, and to require the department to provide the statistic data.

The lawsuit was filed on **October 9, 2008** in the Specialized Interregional Economic Court of Eastern Kazakhstan Oblast.

The case consideration started on **October 20**. As an argument during the process, the claimant presented a decision of the Supreme Court on a similar case (see case No. 5). As a result, on **November 27**, the court made a decision to satisfy the lawsuit demands.

The Appeal and Review Board on Civic Affairs of Eastern Kazakhstan Oblast refused to satisfy the defendant's claims.

The decision entered into force.

On **May 5, 2009**, the Statistics Department of Eastern Kazakhstan Oblast provided the requested information.

**No. 13**

**Lawsuit about banning all types of economic activity in the water protection zone of the Yesentai River (city of Almaty) and about cleaning the land plot from construction waste.**

As the court did not recognize as illegal the decision of the Akimat of Almaty City about granting the right of a private ownership on a land plot located within a water protection zone, a new lawsuit was initiated (see lawsuit No. 9).

The lawsuit in the interests of the citizens was filed on **October 28, 2008** in Medeu District Court of Almaty City.

The lawsuit demands:

1. To require the owner to remove the construction waste from the land plot located within the water protection zone of the Yesentai River.
2. To prohibit the owner of the land plot from conducting any construction development or any other household related activities in the water protection zone.

On **December 18**, Medeu District Court refused to satisfy the lawsuit demands.

The Appeal and Review Board on Civic Affairs of Almaty City Court refused to satisfy the claims.

On **June 26, 2009**, a complaint for review was filed in the Supreme Court's Review Board on Civic Affairs. The complaint was not satisfied. Thus, the Supreme Court ignored the provisions of the Water Code, and also the construction norms and rules that prohibit private ownership of the land located within the water protection zones, as well as any construction development within the zones.

#### **No. 14**

#### **Lawsuit about recognizing the conclusions of the State Environmental Assessment to be invalid and suspending activities of "Tsentr beton" Ltd.**

The lawsuit demanded to recognize as invalid the conclusions of the state environmental assessment No. 03-08-543 (dated February 27, 2007), conducted by the Almaty City Territorial Department on Environmental Protection (now Balkhash-Alakolski Ecology Department of the Committee for Ecological Regulation and Control). To require the Akimat of Almaty City to suspend the economic activities of "Tsentr beton" Ltd. until it is brought into full compliance with the requirements of the Environmental Code.

The lawsuit was submitted in the interests of the residents of the city of Almaty on **October 31, 2008** in Court No. 2 of Bostandykski District of Almaty City.

On **February 11**, the court recognized that the conclusions of the state environmental assessment were invalid and suspended the enterprise's economic activities.

But on **April 3**, Almaty City Court's Board on Civic Affairs satisfied the defendants' appeal and cancelled the decision of Court No. 2 of the Bostandykski District.

Almaty City Court's Board on Civic Affairs refused to satisfy the complaint for review filed by the claimant.

On **September 16**, the Supreme Court's Review Board on Civic Affairs partially satisfied the complaint for review. The decisions of Almaty City Court's Board on Civic Affairs on the defendants' appeal and the complaint for review of the Ecological Society were cancelled.

The case is forwarded for new consideration to Court No. 2 of Bostandykski District.

On **October 21**, on-site court hearings took place at the "Tsentr beton" Ltd. facilities and on the land plots of the residents whose interests were claimed by the lawsuit.

On **November 30**, the court refused to satisfy the lawsuit demands.

Almaty City Court's Board on Civic Affairs refused to satisfy the complaints filed by Green Salvation.

Due to changes made in the Civil Procedural Code, the courts could not determine the proper procedure for consideration of the cassation claim.<sup>7</sup> As a result, the case consideration took place only on **June 17, 2010**.

On **July 7**, a petition was filed in the Supreme Court.

On **September 16**, the Supreme Court's Review Board on Civic Affairs refused to initiate a review procedure.

During the case consideration, the judges freely interpreted the legislation: they intentionally replaced the term "object of environmental assessment of a specific category" with the term "class of a danger of an enterprise."

## **No. 15**

### **Lawsuit about the failure of the Ministry of Public Health to provide information.**

The lawsuit demanded to acknowledge the refusal of the Ministry of Public Health and Committee of the State Sanitary and Epidemiological Control of the Ministry of Public Health to provide information, in particular, a report on "Evaluation of Health Conditions of the People Living in the Area of Karachaganak Oil and Gas Condensate Field," to be an inaction, violating the rights and lawful interests of a juridical person. To require the Ministry to provide the information requested.

The lawsuit in the interests of Berezovka village residents was filed to Essil District Court No. 2 of Astana City on **June 26, 2009**, and later, on **August 13**, to the Specialized Interregional Economic Court of Astana City.

On **October 27**, the court refused to satisfy the lawsuit demands, explaining that Green Salvation was provided with the requested report during the court hearings. But the report was provided in an incomplete electronic form. The court decision did not satisfy the claimants.

Astana City Court's Board on Civic Affairs refused to satisfy the claimants' complaints.

On **March 4, 2010**, the Supreme Court's Review Board on Civic Affairs refused to initiate a review procedure.

## **No. 16**

### **Lawsuit about public authorities' provision of inadequate information about the situation in the water protection zone of the Yesentai River (city of Almaty).**

An act dated May 28, 2007, issued by public authorities during inspection of the land plot on the bank of the Yesentai River indicated that the land plot



located in the water protection zone was allocated without consideration of the Sanitary Norms and Rules, and that there is construction waste on the territory of the land plot. But the court considered the facts presented in the act to be inadequate and did not recognize the violation of the law (see cases No. 9 and No. 13).

Therefore, the new lawsuit demanded to acknowledge the information presented in the act dated May 28, 2007 provided to Green Salvation, to be inadequate environmental information. The act was signed by the Almaty Department of Mobilization, Civil Defense, Emergency Prevention and Response, the Almaty Department of Public Health, the Department of Natural Resources and Regulation of Natural Resource Use, the Akimat of Medeu District, the Almaty City Territorial Department on Environmental Protection, and the Balkhash-Alakolsky Ecology Department of the Committee for Ecological Regulation and Control.

The lawsuit in protection of the interests of Almaty residents was filed on **September 3, 2009** in the Specialized Interregional Economic Court of Almaty City (SIEC).

On **September 16**, the SIEC determined that the case needed to be returned, explaining that it contained mistakes.

On **September 24**, the lawsuit was re-filed to the SIEC of Almaty City, but was returned with the explanation that it was not under the court's jurisdiction.

On **November 12**, a special claim was submitted to Almaty City Court.

On **December 15**, the case's court jurisdiction was approved and the case was filed to the SIEC of Almaty.

On **January 14, 2010**, the lawsuit was re-filed to the SIEC of Almaty City.

On **January 25**, the judge returned the case using the same explanation—"not under the court's jurisdiction."

On **February 10**, as the decision about jurisdiction made by the court of a higher instance was final and was not subjected to appeal, the case was submitted again to the SIEC.

On **February 19**, the judge determined that the case would be returned because it is "not in jurisdiction" of the SIEC.

Only on **March 12**, was Green Salvation informed that the case had been returned.

On **March 16**, in order to start the case trial procedures, Green Salvation addressed the Head of the Almaty City Court and the Head of the SIEC.

On **April 5**, Green Salvation received a reply from the Almaty City Court's Board on Civic Affairs with the suggestion to make an appeal against the determination of the judge.

On **April 6**, in order to start the case trial procedures, a Green Salvation representative obtained permission to meet the Head of Almaty City Court's

Board on Civic Affairs, who by phone obliged the judge of Medeu District Court to accept the case for consideration and start the trial procedures. The judge followed the direction of the board head, although the decision of Almaty City Court's Board on Civic Affairs, which determined the case's jurisdiction to the SIEC, was not cancelled.

It took 8 months to determine the case jurisdiction.

On **May 19**, trial procedures started.

The first 5 court hearings took place without a factual case consideration because the defendants either did not show up for the hearings, or came unprepared, and the hearings were postponed.

On **June 24**, the court refused to satisfy the lawsuit demands.

The decision came into force.

### **No. 17**

#### **Lawsuit about cancellation of decisions, conclusions, and endorsements related to the project to construct of a module veterinary laboratory (city of Almaty).**

Not far away from the city downtown, the construction of a veterinary laboratory started without the positive conclusion of an environmental assessment, without agreement from the local residents, and without a confirmed construction project.

A lawsuit to protect the lawful interests of Almaty city residents was filed on **October 16, 2009**, to Medeu District Court of Almaty City.

The lawsuit demands:

1. To cancel the following documents, as being illegitimate endorsements of the construction project of a module veterinary laboratory of the State Utility Enterprise "State Veterinary Laboratory," which led to a violation of the lawful interests of the local residents:

- permission of the Department of the State Architectural and Civil Engineering Control of Almaty City dated August 14, 2009, under No. 224 allowing the construction;

- permission given by the Department of Natural Resources and Regulation of Natural Resource Use of Almaty City, under No. 03-20-586 dated June 15, 2009;

- work order signed by the Department of the State Architectural and Construction Control under No. 018 dated June 25, 2009, for the opening of a foundation pit and removal of the soil;

- endorsement signed by the Department of Committee of the State Sanitary and Epidemiological Control of Almaty City No. 011 dated 30.01.2008;

- endorsement of the Committee of the State Sanitary and Epidemiological Control of the Ministry of Public Health of the Republic of Kazakhstan No. 07-12-1730 dated December 19, 2007;

- conclusion of the State Environmental Assessment by the Department of Natural Resources and Regulation of Natural Resources Use No. 04-08-280 dated December 29, 2007, and permission for emissions into the environment dated July 15, 2009, under No. 0000184, series A-07.

2. To acknowledge as illegitimate and invalid the construction of the module veterinary laboratory, which led to the violation of rights and lawful interests of the district residents.

3. To prohibit the placement, construction, and start-up works for the module veterinary laboratory performed in violation of the legislation of the Republic of Kazakhstan.

On **October 20, 2009**, the court returned the case materials, explaining that the lawsuit was supposedly filed in an improper order.

On **November 9**, a special claim was submitted to Almaty City Court, and was considered on **December 1**. The case was directed to Medeu District Court for the trial procedure.

Several court hearings took place during the period from December 2009 to February 2010.

On **February 16**, the court denied satisfying the lawsuit demands.

On **February 25**, a claim was filed to Almaty City Court's Board on Civic Affairs.

On **April 27**, the Board refused to satisfy the claim. The decision was received only after a claim on violation of time limits had been filed to the Head of the Almaty City Court on **May 17**.

On **May 24**, a cassation claim was filed to Almaty City Court's Board on Civic Affairs and was rejected.

On **July 24**, an appeal was filed to the Supreme Court.

On **September 16**, the Supreme Court's Review Board on Civic Affairs refused to initiate a review procedure.

The court did not take into consideration the fact that the defendants were lacking any materials about accounting for public opinion, the conclusions of the environmental assessment, and an approved project for the construction. Moreover, the court did not take into account the violations that took place during realization of the project: there was not a sanitary protection zone, the public utilities were not taken outside of the construction site, there was not a storm water management system, the drive-ways to the local residents homes were destroyed, and other violations.<sup>8</sup>

## No. 18

**Lawsuit about inaction of a governmental authority—  
Committee of Court Administration  
under the Supreme Court.**

The lawsuit demanded to recognize the failure of the Committee of Court Administration under the Supreme Court of the Republic of Kazakhstan to comply with its obligations and provide a timely realization of executive documents by the Administrator of the Courts of Almaty City on execution of the SIEC's decisions dated September 10, 2007, and October 21, 2008, to be an illegal action (inaction). On September 10, 2007, the court made a decision about the liquidation of the illegal dump near the "Chimbulak" health resort (please see cases No. 7 and No. 10). To require the Committee of Court Administration under the Supreme Court to undertake legal measures to force the Administrator of the Courts of Almaty City to start immediate implementation of the SIEC's decisions indicated above.

The lawsuit was submitted in the interests of the residents of the city of Almaty on **November 10, 2009**, to Essil District Court No. 2 of Astana City, and later, on **February 4**, filed to the Specialized Interregional Economic Court of Astana City.

On **November 16**, Essil District Court No. 2 returned the lawsuit, explaining that it was outside of its jurisdiction.

A special claim was submitted to Astana City Court, which on **December 15, 2009** determined the case's jurisdiction to the SIEC of Astana.

On **January 25, 2010**, a request regarding the court's delay in filing the case was directed to Astana City Court.

Only on **February 4**, the case was filed in the SIEC of Astana.

Several court hearings took place in **March and April**.

On **April 28**, the court made a judgment by default about satisfaction of the lawsuit demands. But later, the court cancelled the decision, violating the Civil Procedural Code.

Several court hearings took place in **May and June**.

On **June 22**, the court made a new decision to refuse satisfaction of the claimant's complaints.

On **July 21**, an appeal was filed to Astana City Court.

On **September 27**, the court considered and satisfied the appeal. The decision came into force.

The case dragged on for 7 months. The illegal dump is not liquidated, and as of the *Herald's* publication, soil restoration has not been finished. It took a month to determine the case's jurisdiction, and for 2 months the case

remained without movement in Astana City Court. By canceling the court decision, the SIEC judge violated the norms of the Civil Procedural Code.

Translated by Sofya Tairova.

<sup>1</sup> For more details about the situation in Gornyi Gigant and the Ministry of Internal Affairs' quarters, please, visit: <http://www.greensalvation.org/en/index.php?page=Arhus-en>. After the Second Meeting of the Parties to the Convention, the issue was also covered in the mass-media.

<sup>2</sup> For more details, please, visit: <http://www.greensalvation.org/en/index.php?page=Arhus-en>.

<sup>3</sup> The Russian version of the decision is available at:

<http://www.greensalvation.org/index.php?page=vs-zko-kpo>.

<sup>4</sup> More detailed information in Russian can be found at:

<http://www.greensalvation.org/index.php?page=np>.

<sup>5</sup> The court decision in Russian is available at:

<http://www.greensalvation.org/uploads/Docs/20081021reshenie%20suda.pdf>.

<sup>6</sup> Additional materials can be found at:

<http://www.greensalvation.org/en/index.php?page=berezovka-en>.

<sup>7</sup> In 2009, the Civil Procedural Code introduced changes that replaced a complaint for review with a cassation complaint. And petitions shall be filed in the Supreme Court.

<sup>8</sup> For additional information, please, visit:

<http://www.greensalvation.org/en/index.php?page=wto-human-rights>.

## Appendix

### The Evolution of Kazakhstan's Environmental Protection Legislation<sup>1</sup>

(A Comprehensive Chronology from 1991 to May 1, 2011)

In the evolution of the Republic of Kazakhstan's environmental protection legislation, it is possible to clearly identify a few periods that have been defined by changes in the country's political and socioeconomic situation.

#### 1991 - 1994

The development of legislation was influenced by the inertia of the democratic tendencies of perestroika, the deteriorating socioeconomic situation, and the aspirations of the young government to renounce a raw materials economy and create the image of a country oriented towards democratic values. The environmental situation improved a little as a result of a drop in industrial production and a decline in agriculture.

The legal situation:

- the human right to a favorable environment was secured in the Republic of Kazakhstan's Constitution in 1993;
- attempts were made to develop a state environmental policy;
- ownership of natural resources was secured for the country's highest representative legal body;
- there was "a 'turn away' from the narrow, departmentally-based resource legislation towards environmental legislation"<sup>2</sup>;
- a specialized body for environmental protection was created, with the functions of a state oversight control body;
- the right of the public to participate in the resolution of issues related to the environment was acknowledged;
- economic mechanisms for the rational use of nature began to be formulated;
- a series of international environmental protection conventions were signed.

### **1995 - Early 2003**

This period saw a relative improvement in the economic situation. The basis of the country's economic growth was the intensive exploitation of natural resources. As a result of the de facto looting of state property and the signing of contracts with transnational resource exploitation companies, well-to-do clans and groupings formed. The political sphere saw a gradual return to a command/administrative method of management.

The environmental situation again deteriorated as a result of the growth in industrial enterprises and massive violations of environmental protection legislation.

The legal situation:

- provisions regarding the human right to a favorable environment were not included in the Constitution of 1995, which replaced the 1993 version;
- the Parliament's role in the resolution of environmental problems was reduced to legislative activities;
- the ownership rights to natural resources were, in effect, transferred to the executive bodies of power;
- legislation began to be eased in favor of natural resource users;
- there were massive violations of public rights as a result of imperfections in and a lack of compliance with the laws;
- there were limits placed on the authority of the specialized body on environmental protection and a deprivation of its functions as a state oversight control body;
- mechanisms for the rational use of nature were transformed and relegated to an adjunct of the fiscal system;

- international obligations were neglected, accompanied by declarations regarding the incorporation of international legal norms in national legislation.

### **2003 - First Half of 2007**

This period saw the relative stabilization of the economy, in great measure predetermined by the sharp rise in the price of oil on the global market. The ruling elite ignored the symptoms of impending crisis and began to redistribute the ownership of natural resources, particularly land. A bureaucratic, corrupt state continued to form in the political sphere, but more and more the clans, which were gaining strength, came out from under the influence of the center. The state aimed to get the “green” movement under control. The environmental situation continued to deteriorate.

The legal situation:

- despite being updated, the acting legislation became less effective than in 1991;

- legislation continued to be eased in favor of natural resource users;

- environmental protection bodies were transformed and almost entirely subjugated by the executive powers;

- massive violations of the public right to participate in the resolution of environmental problems occurred as a result of the lack of improvements to and compliance with the laws;

- mechanisms for rational nature use were finally destroyed;

- environmental protection legislation was used to exert pressure on transnational companies in order to redistribute profits;

- disinformation of the public became stronger in regards to the role of public in the resolution of environmental problems;

- attempts were made to use legal methods to get the “green” movement under control;

- the requirements of international agreements were blatantly ignored, raising the question as to whether the Republic of Kazakhstan must withdraw from a number of environmental conventions.

### **The Second Half of 2007 - Early 2011**

The mirage of economic and political stability faded away. The crisis in the economy impacted all aspects of life. The inflation level remained high. The clans led an open fight against the authorities. The public's political activity increased. The government was maneuvering, trying to control the situation. The “green” party created after the transformation of one of the officially registered parties tried to unite non-governmental environmental organizations and enter into coalition with the European “green” parties. Many representatives of the international community displayed concern about

the political situation in the country; nevertheless, Kazakhstan was granted chairmanship of the OSCE.

The legal situation:

- environmental legislation was used to fight political opponents;
- laws were tailored to suit the specific interests of industrial groups;
- acting legislation was used in order to enrich bureaucrats;
- the state apparatus was weakened and the principle of division of powers was violated.

The so-called adaptation of national legislation to the requirements of international law, in particular, to the Aarhus Convention, did not help and even impeded the development of effective legal mechanisms for the protection of nature and the human rights to a favorable environment.

In the Statement of the Constitutional Council of the Republic of Kazakhstan dated June 22, 2009, No. 09-5/1 “About the State of Constitutional Legality in the Republic of Kazakhstan” it is said that work to strengthen constitutional legality must particularly include the “development of a system of measures for realization of the international acts ratified by the Republic of Kazakhstan in the area of human and citizens’ rights and freedoms, and for the elimination of controversies between national legislation and international acts...”

## **The Constitution**

### **1993**

The Constitution of the Republic of Kazakhstan (further RK), January 28, 1993.

The original Constitution went out of force when a new Constitution was adopted on August 30, 1995.

### **1995**

The Constitution of the Republic of Kazakhstan. Adopted by a republic referendum on August 30, 1995.

Changes incorporated:

Law of the RK, October 7, 1998, No.284-I;

Law of the RK, May 21, 2007, No.254-III;

Law of the RK, February 2, 2011, No.403-IV.

## **Environmental Protection**

### **1991**

Law of the Kazakh Soviet Socialist Republic from June 18, 1991, “On



Environmental Protection in the Kazakh Soviet Socialist Republic.”

Changes incorporated:

Decree from the President of the RK, July 31, 1995, No.2392;

Decree from the President of the RK, October 5, 1995, No.2488;

Law of the RK, July 11, 1997, No.154-I.

This law went out of force in accordance with the Law of the RK, July 15, 1997, No.161-I.

## **1997**

Law of the Republic of Kazakhstan, July 15, 1997, No.160-I “On Environmental Protection.”

Changes incorporated:

Law of the RK, December 24, 1998, No.334-I;

Law of the RK, May 11, 1999, No.381-I;

Law of the RK, November 29, 1999, No.488-I;

Law of the RK, June 4, 2001, No.205-II;

Law of the RK, December 24, 2001, No.276-II;

Law of the RK, August 9, 2002, No.346-II;

Law of the RK, May 25, 2004, No.553-II;

Law of the RK, December 9, 2004, No.8-III;

Law of the RK, December 20, 2004, No.13-III;

Law of the RK, April 15, 2005, No.45-III;

Law of the RK, July 8, 2005, No.71-III;

Law of the RK, January 10, 2006, No.116-III;

Law of the RK, January 31, 2006, No.125-III;

Law of the RK, December 29, 2006, No.209-III.

The law went out of force in accordance with the Environmental Code of the RK, January 9, 2007, No.212-III.

## **2007**

Environmental Code of the Republic of Kazakhstan, January 9, 2007, No.212-III.

Changes incorporated:

Law of the RK, July 27, 2007, No.320-III;

Law of the RK, December 4, 2008, No.97-IV;

Law of the RK, December 10, 2008, No.101-IV;

Law of the RK, June 23, 2009, No.164-IV;

Law of the RK, July 17, 2009, No.188-IV;

Law of the RK, November 16, 2009, No.200-IV;

Law of the RK, January 21, 2010, No.242-IV;

Law of the RK, March 19, 2010, No.258-IV;

Law of the RK, December 28, 2010, No.369-IV;  
 Law of the RK, January 6, 2011, No.378-IV;  
 Law of the RK, January 6, 2011, No.379-IV;  
 Law of the RK, January 10, 2011, No.383-IV;  
 Law of the RK, March 1, 2011, No.414-IV.

## **Land Protection and Use**

### **1990**

Land Code of the Kazakh Soviet Socialist Republic, November 16, 1990, No.332-XII.

Changes incorporated:

Law of the RK, June 26, 1992, No.1431-XII;  
 Law of the RK, April 8, 1993, No.2092-XII;  
 Decree from the President of the RK, July 31, 1995, No.2392;  
 Decree from the President of the RK, October 5, 1995, No.2488;  
 This law went out of force in accordance with the Presidential Decree from December 22, 1995, No.2717.

### **1995**

Decree from the President of the Republic of Kazakhstan, bearing the force of law, from December 22, 1995, No.2717 "On Land."

Changes incorporated:

Law of the RK, July 14, 1997, No.158-I;  
 Law of the RK, June 30, 1997, No.139-I;  
 Law of the RK, July 1, 1998, No.259-1;  
 Law of the RK, July 10, 1998, No.283-I;  
 Law of the RK, May 11, 1999, No.381-1;  
 Law of the RK, January 23, 2001, No.151-II.  
 The law went out of force in accordance with the Law of the RK from January 24, 2001, No.153-II.

### **2001**

Law of the Republic of Kazakhstan from January 24, 2001, No.152-II "On Land."

Changes incorporated:

Law of the RK, July 10, 2001, No.227-II;  
 Law of the RK, December 24, 2001, No.276-II;  
 Law of the RK, January 8, 2003, No.375-II.  
 The law went out of force in accordance with the Law of the Republic of Kazakhstan from July 8, 2003, No.479-II.

**2003**

Land Code of the Republic of Kazakhstan, June 20, 2003, No.442-II.

Changes incorporated:

Law of the RK, May 4, 2005, No.48-III;  
 Law of the RK, January 10, 2006, No.116-III;  
 Law of the RK, January 31, 2006, No.125-III;  
 Law of the RK, June 22, 2006, No.147-III;  
 Law of the RK, July 5, 2006, No.158-III;  
 Law of the RK, July 5, 2006, No.162-III;  
 Law of the RK, July 7, 2006, No.176-III;  
 Law of the RK, January 9, 2007, No.213-III;  
 Law of the RK, January 12, 2007, No.222-III;  
 Law of the RK, July 6, 2007, No.275-III;  
 Law of the RK, July 6, 2007, No.276-III;  
 Law of the RK, July 6, 2007, No.279-III;  
 Law of the RK, July 21, 2007, No.297-III;  
 Law of the RK, July 21, 2007, No.307-III;  
 Law of the RK, July 26, 2007, No.311-III;  
 Law of the RK, July 27, 2007, No.320-III;  
 Law of the RK, December 19, 2007, No.11-IV;  
 Law of the RK, May 26, 2008, No.34-IV;  
 Law of the RK, July 5, 2008, No.66-IV;  
 Law of the RK, December 1, 2008, No.94-IV;  
 Law of the RK, December 10, 2008, No.101-IV;  
 Law of the RK, February 13, 2009, No.135-IV;  
 Law of the RK, July 4, 2009, No.166-IV;  
 Law of the RK, July 10, 2009, No.180-IV;  
 Law of the RK, July 11, 2009, No.183-IV;  
 Law of the RK, July 17, 2009, No.188-IV;  
 Law of the RK, July 24, 2009, No.190-IV;  
 Law of the RK, March 19, 2010, No.258-IV;  
 Law of the RK, December 28, 2010, No.369-IV;  
 Law of the RK, January 6, 2011, No.378-IV;  
 Law of the RK, March 1, 2011, No.414-IV;  
 Law of the RK, March 24, 2011, No.420-IV;  
 Law of the RK, March 25, 2011, No.421-IV.

**Forest Preservation and Use****1993**

Forestry Code of the Republic of Kazakhstan from January 23, 1993,

No.1924-XII.

Changes incorporated:

Decree from the President of the RK, October 5, 1995, No.2488;

Law of the RK, May 11, 1999, No.381-1;

Law of the RK, January 23, 2001, No.151-II;

Law of the RK, December 24, 2001, No.276-II.

The law went out of force with the Law of the RK from July 8, 2003, No.477-II.

## **2003**

Forestry Code of the Republic of Kazakhstan from July 8, 2003, No.477-II.

Changes incorporated:

Law of the RK, December 20, 2004, No.13-III;

Law of the RK, January 31, 2006, No.125-III;

Law of the RK, July 7, 2006, No.176-III;

Law of the RK, January 9, 2007, No.213-III;

Law of the RK, January 12, 2007, No.222-III;

Law of the RK, December 10, 2008, No.101-IV;

Law of the RK, July 17, 2009, No.188-IV;

Law of the RK, March 19, 2010, No.258-IV;

Law of the RK, January 6, 2011, No.378-IV;

Law of the RK, January 6, 2011, No.379-IV.

## **The Preservation and Use of Water Resources**

## **1993**

Water Code of the Republic of Kazakhstan from March 31, 1993, No.2061-XII.

Changes incorporated:

Law of the RK, December 24, 1996, No.58-1;

Law of the RK, May 11, 1999, No.381-1;

Law of the RK, January 23, 2001, No.151-II;

Law of the RK, December 24, 2001, No.276-II.

The law went out of force in accordance with the Water Code of the Republic of Kazakhstan from July 9, 2003, No.481-II.

## **2003**

Water Code of the Republic of Kazakhstan from July 9, 2003, No.481-II.

Changes incorporated:

Law of the RK, December 20, 2004, No.13-III;

Law of the RK, January 10, 2006, No.116-III;  
 Law of the RK, January 31, 2006, No.125-III;  
 Law of the RK, July 7, 2006, No.174-III;  
 Law of the RK, January 9, 2007, No.213-III;  
 Law of the RK, January 12, 2007, No.222-III;  
 Law of the RK, July 27, 2007, No.315-III;  
 Law of the RK, December 19, 2007, No.11-IV;  
 Law of the RK, May 26, 2008, No.34-IV;  
 Law of the RK, December 10, 2008, No.101-IV;  
 Law of the RK, December 29, 2008, No.116-IV;  
 Law of the RK, February 12, 2009, No.132-IV;  
 Law of the RK, July 10, 2009, No.180-IV;  
 Law of the RK, July 17, 2009, No.188-IV;  
 Law of the RK, January 21, 2010, No.242-IV;  
 Law of the RK, March 19, 2010, No.258-IV;  
 Law of the RK, December 28, 2010, No.369-IV;  
 Law of the RK, January 6, 2011, No.378-IV;  
 Law of the RK, January 10, 2011, No.383-IV;  
 Law of the RK, March 1, 2011, No.414-IV;  
 Law of the RK, March 25, 2011, No.421-IV.

## **Protection of Natural Objects and Complexes**

### **1997**

Law of the Republic of Kazakhstan from July 15, 1997, No.162-1 “On Specially Protected Natural Territories.”

Changes incorporated:

Law of the RK, May 11, 1999, No.381-1;  
 Law of the RK, January 23, 2001, No.151-II;  
 Law of the RK, December 24, 2001, No.276-II;  
 Law of the RK, May 25, 2004, No.553-II;  
 Law of the RK, December 20, 2004, No.13-III;  
 Law of the RK, January 31, 2006, No.125-III.

The law went out of force in accordance with the Law of the Republic of Kazakhstan from July 7, 2006, No.175-III.

### **2006**

Law of the Republic of Kazakhstan from July 7, 2006, No.175-III “On Specially Protected Natural Territories.”

Changes incorporated:

Law of the RK, January 9, 2007, No.213-III;

Law of the RK, December 1, 2008, No.94-IV;  
Law of the RK, December 10, 2008, No.101-IV;  
Law of the RK, July 17, 2009, No.188-IV;  
Law of the RK, January 21, 2010, No.242-IV;  
Law of the RK, March 19, 2010, No.258-IV;  
Law of the RK, January 6, 2011, No.378-IV;  
Law of the RK, March 1, 2011, No.414-IV.

## **Protection of the Animal World**

### **1993**

Law of the Republic of Kazakhstan from October 21, 1993, No.2463-XII  
“On the Protection, Reproduction and Use of the Animal World.”

Changes incorporated:

Law of the RK, May 11, 1999, No.381-I;  
Law of the RK, January 23, 2001, No.151-II;  
Law of the RK, December 24, 2001, No.276-II.

The law went out of force in accordance with the Law of the Republic of Kazakhstan from July 9, 2004, No.593-II.

### **2004**

Law of the Republic of Kazakhstan from July 9, 2004, No.593-II “On the Protection, Reproduction and Use of the Animal World.”

Changes incorporated:

Law of the RK, January 31, 2006, No.125-III;  
Law of the RK, January 9, 2007, No.213-III;  
Law of the RK, December 10, 2008, No.101-IV;  
Law of the RK, July 17, 2009, No.188-IV;  
Law of the RK, January 21, 2010, No.242-IV;  
Law of the RK, March 19, 2010, No.258-IV;  
Law of the RK, January 6, 2011, No.378-IV;  
Law of the RK, January 10, 2011, No.383-IV.

## **Protection of the Atmosphere**

### **2002**

Law of the Republic of Kazakhstan from March 11, 2002, No.302-II “On Protection of the Atmosphere.”

Changes incorporated:

Law of the RK, December 20, 2004, No.13-III;  
Law of the RK, January 10, 2006, No.116-III;

Law of the RK, January 31, 2006, No.125-III;

Law of the RK, December 29, 2006, No.209-III.

The law went out of force in accordance with the Environmental Code of the Republic of Kazakhstan from January 9, 2007, No.212-III.

## **Law on Environmental Assessments**

### **1997**

Law of the Republic of Kazakhstan from March 18, 1997, No.85-I “On Environmental Assessments.”

Changes incorporated:

Law of the RK, December 24, 1998, No.334-I;

Law of the RK, May 11, 1999, No.381-I;

Law of the RK, July 2, 2003, No.454-II;

Law of the RK, December 20, 2004, No.13-III.

The law went out of force in accordance with the Environmental Code of the Republic of Kazakhstan from January 9, 2007, No.212-III.

## **Reformation of the Ministry of the Environment**

### **1988**

Decision by the Council of Ministers of the Kazakh SSR from February 18, 1988, “On Realizing the Decision of the Central Committee of the Communist Party of the Soviet Union and the Council of Ministers of the USSR” from January 7, 1988, “On Fundamentally Restructuring Nature Protection Matters in the Country.” Created by the State Committee of the Kazakh SSR for Nature Protection.

### **1990**

Decree from the President of the Kazakh SSR from December 20, 1990, “On Reorganizing the State Management Bodies in the Kazakh SSR.”

To form the State Committee of the Kazakh SSR on Ecology and Nature Use on the basis of the abolished State Committee of the Kazakh SSR on Nature Protection.

### **1991**

Decision by the Cabinet of Ministers of the Kazakh SSR from March 29, 1991, No.202 “On an Outline for Managing the State Committee of the Kazakh SSR on Ecology and Nature Use.”

“In connection with the creation of the State Committee of the Kazakh SSR on Ecology and Nature Use on the basis of the abolished State Committee of

the Kazakh SSR on Nature Protection, and in accordance with the Decree from the President of the Kazakh SSR from December 20, 1990, 'On Reorganizing the State Management Bodies in the Kazakh SSR', the Cabinet of Ministers of the Kazakh SSR has decided:

"1. To establish that the State Committee of the Kazakh SSR on Ecology and Nature Use (GosKomEkologiya) is the central body of state management in the field of nature protection and the use of natural resources, on par with the Oblast Executive Committee, Alma-Ata and Leninsky City Executive Committees, and bears, in its entirety, responsibility for the state of the environment and the rational use of nature in the republic."

## 1992

Decision by the Cabinet of Ministers of the Republic of Kazakhstan from March 11, 1992, No.216 "Issues of the Ministry of Ecology and Bioresources of the Republic of Kazakhstan."

"In implementing the Decree of the President of the Republic of Kazakhstan from February 7, 1992, 'On Updating the Organization and Activities of the State Management Bodies of the Republic of Kazakhstan under Conditions of Economic Reform', in particular the formation of the Ministry of Ecology and Bioresources of the Republic of Kazakhstan, the Cabinet of Ministers of the Republic of Kazakhstan has decided:

1. To establish that the Ministry of Ecology and Bioresources of the Republic of Kazakhstan, having legal successors in the State Committee of the Republic of Kazakhstan on Ecology and Nature Use and the Forestry Ministry of the Republic of Kazakhstan, has the authority and exercises the function of an oversight management and control body in the sphere of protecting the natural environment on the territory of the Republic of Kazakhstan.

The decision of the Ministry of Ecology and Bioresources of the Republic of Kazakhstan and its local bodies, adopted under its competency, is required for implementation by all ministries, departments, institutions, enterprises and organizations, regardless of the form of ownership and departmental affiliation, and by citizens."

## 1997

Decree from the President of the Republic of Kazakhstan from October 10, 1997, No.3655 "On Measures to Further Increase the Effectiveness of State Management in the Republic of Kazakhstan."

This decree mandated the formation of the Ministry of Environment and Natural Resources of the Republic of Kazakhstan, transferring to this Ministry the authority to manage the property and matters previously the responsibility



of the abolished Ministry of Energy and Natural Resources of the Republic of Kazakhstan.

## 2002

Decree from the President of the Republic of Kazakhstan from August 28, 2002, No.931 “On Measures to Further Improve the State Management System of the Republic of Kazakhstan.”

This decree mandated the reorganization of the “Ministry of Natural Resources and Environmental Protection of the Republic of Kazakhstan by way of transferring to the Ministry of Agriculture of the Republic of Kazakhstan its functions and authority in the field of managing water, forest, fishing and hunting resources.”

## 2007

The Environmental Code is passed. As a result, some of the powers of the Ministry of Environmental Protection are redistributed to local authorities. In particular, the right to perform state environmental assessments for a variety of enterprises was redistributed to local authorities.

By the Decree of the Government of the Republic of Kazakhstan dated December 8, 2007, No.1201 “Questions of the Ministry of Environmental Protection of the Republic of Kazakhstan,” the territorial organs of the Ministry of Environmental Protection were reorganized. They were merged.

The Nature Protection Control Committee of the Ministry of Environmental Protection of the Republic of Kazakhstan was reorganized into the Committee of Environmental Regulation and Control.

The territorial bodies of the Ministry of Environmental Protection were reorganized into the territorial bodies of the Committee of Environmental Regulation and Control of the Ministry of Environmental Protection.

Translated by Michelle Kinman and Sofya Tairova.

---

<sup>1</sup> Legal Reference System “Yurist”: [www.zakon.kz](http://www.zakon.kz) as of May 1, 2011. These materials encompass only primary normative legal acts.

<sup>2</sup> D.L.Baideldinov. Environmental Legislation of the Republic of Kazakhstan. Almaty, 1995, p.53.

# Monitoring Compliance with the Aarhus Convention

Nataliya Medvedeva

The Ecological Society Green Salvation continues to conduct ongoing monitoring of the Republic of Kazakhstan's compliance with the Aarhus Convention. This material includes information starting from the Second Meeting of the Parties to the Aarhus Convention in May 2005, through January 1, 2011.

## Part I

The summary below includes the results of monitoring for the period between the Second and Third Meetings of the Parties to the Aarhus Convention.

A summary of 2005-2006 monitoring is available in the *Green Salvation Herald* 2006 (Almaty, 2007).

### Legislation

Literally a few days after the completion of the Second Meeting of the Parties, on **May 30, 2005**, the Law "On International Agreements of the Republic of Kazakhstan" was passed. Article 20 of the law states:

"1. Every active international agreement of the Republic of Kazakhstan is subject to obligatory and conscientious execution by the Republic of Kazakhstan.

**2. In the event of a contradiction between international agreements of the Republic of Kazakhstan and the laws of the Republic of Kazakhstan, international agreements of the Republic of Kazakhstan are subject to change, suspension or termination of force."**

The provisions of paragraph 2 threaten Kazakhstan's compliance with the Aarhus Convention and contradict article 4, paragraph 3 of the Constitution of the Republic of Kazakhstan, which states:

**"International agreements ratified by the Republic supersede national laws, effective immediately**, except in cases when an international agreement requires the passing of a new law."

On **September 13, 2005**, a Deputy of the Mazhilis of Parliament officially raised the question of repealing this article.

On **October 22**, the government found that article 20, paragraph 2 of the law in question is "an obvious violation of article 27 of the Vienna Convention on the Law of Treaties, in accordance with which a government does not have the right to refer to the provisions of its domestic law as justification for not fulfilling its agreements." The government noted that the application of

paragraph 2 in practice has already caused difficulties and a negative reaction abroad.<sup>1</sup>

On **January 25, 2006**, the Mazhilis found article 20, paragraph 2 of the Law “On International Agreements of the Republic of Kazakhstan” in contradiction with the Constitution and came out in favor of its repeal. Yet, it was not until **February 28, 2007**, when this point was eliminated from the law.

One of the main events in terms of reforming Kazakhstan’s environmental protection legislation during 2006 was the preparation of the Environmental Code. According to statements by official bodies, one of the goals of developing the Code was to bring national environmental protection legislation into conformity with the provisions of the Aarhus Convention.

On **December 21, 2006**, senators immediately adopted the draft Environmental Code in two readings. **Discussion of a “green constitution” took less than an hour. On January 9, 2007**, the law was signed by the President.

The haste with which the Code was adopted led to numerous deficiencies and gaps in the document’s content. Public suggestions and comments expressed during discussion of the draft law were not considered. For all intents and purposes, national environmental protection legislation was not brought into complete conformity with the provisions of the Aarhus Convention.

### **Actions by State Bodies**

On **June 3, 2005**, the newspaper *Panorama* (No. 21) published a piece on the results of the Second Meeting of the Parties to the Aarhus Convention in Almaty, with commentary by the Minister of Environmental Protection, A.S.Samakova. In particular, she said that “one should consider the fact that representatives of Kazakhstan submitted appeals to the Committee as recognition of the real work of the Aarhus Convention (rather than the work on the Protocols) in the Republic. In the course of a few months, a lawsuit will come to trial, brought by an Almaty resident against a cement factory that, in the opinion of the plaintiff, is in violation of environmental norms. In terms of the remaining appeals, the leadership of the Aarhus Convention Compliance Committee considered **the government’s actions to be optimal and sufficient** to stabilize the conflicts.”

A panel from the Ministry of Environmental Protection met on **July 7**, and on the agenda was the issue of “Progress Implementing International Conventions in the Field of Environmental Protection.” The presenter, the Director of the Department of Normative/Legal Security and International Collaboration, A.G.Bragin, offered general information on Kazakhstan’s compliance with ratified conventions and protocols. He noted that, “**the work**

**to implement conventions does not bear a systemic character: rather, it is observed only in the periods when quarterly reports are presented.”** In the portion of the presentation entitled “About Primary Conventions” nothing was said about the work to implement the Aarhus Convention or the results of the Second Meeting of the Parties.

On **September 27**, the Commission for Human Rights under the President of the Republic of Kazakhstan discussed questions regarding the protection of citizens’ environmental rights. Based on the information presented by the Deputy Minister of Environmental Protection, S. Kesikbaev, the meeting participants came to the conclusion that the right of citizens to an environment favorable for life and health is substantially limited as a result of the influence of such factors as insufficient financing for environmental protection measures and violations of the norms of environmental legislation.<sup>2</sup>

On **October 4**, the “Planned Steps to Achieve the Decisions of the Second Conference of Parties to the Aarhus Convention” was published on the website of the Ministry of Environmental Protection.<sup>3</sup> The Ecological Society Green Salvation sent suggestions and additions to the Plan to the Ministry of Environmental Protection.

On **November 21**, a public hearing was held at the Kazakh Society for the Protection of Nature regarding the submission of additions to the comprehensive program for improving the environmental situation of the city of Almaty, which is reviewed periodically. In the updated version of the document, there is no mention of measures to improve the environmental situation in the Gorny Gigant micro-district and the Ministry of Internal Affairs’ quarters, measures that should have been taken in connection with the decision of the Aarhus Convention’s Compliance Committee.<sup>4</sup>

On **January 1, 2006**, the deadline expired for the Republic of Kazakhstan’s presentation of its strategy and planned for executing decision II/5a. On **February 3**, the Compliance Committee was sent only the draft strategy, which the Committee began reviewing on **March** at its 11<sup>th</sup> meeting.

Throughout 2006-2007, Green Salvation requested information from the Ministry of Environmental Protection regarding the fate of these documents (see below for additional details). Unfortunately, the draft strategy and plan were not approved by the Government. In the view of the Ministry of Environmental Protection, the need for the documents passed with the adoption of the Environmental Code. However, this did not keep the Government from stating in the “Report on Measures Taken to Implement Decision II/5a” that the “plan for implementing the strategy on the aforementioned measures has been fulfilled.”

On **September 7-8, 2007**, Almaty hosted an international conference of

judges from the countries of Central Asia on the problems of implementing environmental legislation.

Conference participants were presented the document “Questions Regarding the Realization of the Provisions of the Aarhus Convention in the Courts of Almaty City,” prepared by the Supreme Court.

In **February 2008**, the Government submitted to the Aarhus Convention’s Compliance Committee the report “Compliance by Kazakhstan with its Obligations under the Convention and Its Implementation of Decision II/5a of the Meeting of the Parties,” which contains information for the period 2005-2007.

### **Actions by the Ecological Society Green Salvation** **Information Collection**

As an interested party, the Ecological Society Green Salvation continued to send inquiries to governmental establishments, attempting to clarify what measures are being taken to implement the decisions of the Second Meeting of the Parties to the Aarhus Convention.

On **July 28, 2005**, in response to Green Salvation’s inquiry, the Deputy Director of the Ministry of Environmental Protection, E.Aitkenov, sent “Information on Fulfilling the Obligations of the Republic of Kazakhstan to International Environmental Conventions.” The document consists of general information about compliance with conventions ratified by Kazakhstan.

In particular, the document states that the country has “the greatest experience in the region in terms of implementing the Aarhus Convention.” Yet nothing is said about the Committee’s decisions for Kazakhstan or about the results of the Second Meeting of the Parties.

On **December 21**, the General Public Prosecutor’s office responded to an inquiry from Green Salvation regarding the procedure for applying the statutes of the Aarhus Convention. In the response, it was pointed out that the Convention’s statutes “must be applied on the territory of the Republic of Kazakhstan.” It was also noted that it is necessary to develop and adopt a legal act “regulating the procedure for prescribing, listening to, and then taking into account public opinion on issues” related to the environment.

On **February 21, 2006**, Green Salvation sent a letter to the Ministry of Environmental Protection requesting that it report on the measures being taken to execute decision II/5a and to report whether or not the plan of action had been sent to the Compliance Committee.

An Internet search on **April 7** revealed that the “Strategy for Executing the Recommendations of Decision II/5a of the Second Meeting of the Parties to the Aarhus Convention” was not published on any official site. It was

not discussed with the public, but nevertheless was sent to the Compliance Committee. Therefore, Green Salvation requested that the Ministry of Environmental Protection provide this document.

On **April 26**, Green Salvation received a response from the Ministry, from which it was clear that the requested document is a draft strategy. It was suggested that Green Salvation participate in the discussion of the document and prepare remarks and suggestions.

On **October 4**, Green Salvation sent a standard letter to the Ministry of Environmental Protection requesting confirmation as to whether or not the draft strategy and the implementation plan for decision II/5a were approved.

On **November 9**, Green Salvation received a response stating that the strategy and implementation plan were awaiting agreement by the relevant government bodies.

On **February 28, 2007**, Green Salvation again appealed to the Ministry of Environmental Protection with a related inquiry, and on **April 4**, received the answer that the Ministry of Economics and Budget Planning had not allocated funds for the execution of measures to implement decision II/5a.

Concerned by this answer, Green Salvation appealed to authorities at various levels—domestically and internationally.

Green Salvation sent the Ministry of Environmental Protection's April 4<sup>th</sup> response to the Head of Delegation of the European Commission in the Republic Kazakhstan, the Kyrgyz Republic and the Republic of Tajikistan and to the Aarhus Convention's Compliance Committee.

In order to disclose what measures the Government planned to take in connection with the lack of compliance by state bodies with the decision of the Second Meeting, Green Salvation sent letters to the Prime Minister, the Security Council, and the Ministry of Environmental Protection.

Based on Green Salvation's correspondence, EarthWire Kazakhstan prepared the article "Does Kazakhstan Not have Money to Implement the Aarhus Convention?," published on **April 20**, via listserv.<sup>5</sup>

On assignment by the Prime Minister, the Ministry of Economics and Budget Planning reported to Green Salvation that the Ministry of Environmental Protection provided **unreliable** information, as it had not requested money for measures to implement decision II/5a.

On **September 11, 2007**, Green Salvation sent a letter to the Ministry of Environmental Protection requesting "analytical information assessing the status and preparation of the national reports regarding the implementation of international conventions ratified by the Republic of Kazakhstan," which the Ministry prepared for the Government. The information was provided.

On **September 21**, Green Salvation sent a standard letter to the Ministry

of Environmental Protection regarding the fate of the draft strategy. On **October 5**, Green Salvation received the response that in connection with the adoption of the Environmental Code in 2007, which takes into account the recommendations of decision II/5a, the Ministry considers the “question of approving the draft strategy to have **lost relevance**.”

On **October 17**, Green Salvation appealed to the ministries and departments that should have participated in the strategy’s implementation.

The Supreme Court, Ministry of Environmental Protection and the Agency of the Republic of Kazakhstan for the Administration of Land Resources provided brief information on measures undertaken.

The General Public Prosecutor’s office also reported on measures concerning the Convention’s implementation. And pointed out that the responsibility for implementing decision II/5a lies with the Ministry for Environmental Protection.

The Ministry of Energy and Mineral Resources responded that it was premature to provide information as the draft plan was not approved.

The Forestry and Game Committee of the Ministry of Agriculture reported that it could not provide information as the plan for implementing decision II/5a is a draft and not confirmed by a corresponding normative act.

The Ministry of Industry and Trade responded that it is not conducting any efforts to implement the strategy or plan as they were not approved.

The Ministry of Economics and Budget Planning reported that the draft strategy and plan were not agreed to by the Ministry.

**As such, the majority of state bodies that should have participated in implementing the strategy did not undertake any actions because the draft document was not approved by the Government.**

On **December 25, 2006**, Green Salvation sent an inquiry to the General Prosecutor in an attempt to find out what measures the General Public Prosecutor’s office intended to undertake in regards to the inactivity of state bodies, which did not create a legal basis for public participation in the decision-making process regarding environmental matters.

On **January 26, 2007**, the General Public Prosecutor’s office reported that the deadline for reviewing the inquiry had been extended.

On **March 26**, Green Salvation again appealed to the General Public Prosecutor’s office, which reported on **April 4**, that the letter had been reviewed. However, the fundamental questions remained unanswered.

### **Sharing Green Salvation’s experience**

On **February 16-17, 2006**, in Geneva, a representative of Green Salvation

participated in the work of the Task Force on Access to Justice of the Meeting of the Parties to the Aarhus Convention. Questions were raised about Kazakhstan's execution of decision II/5a.<sup>6</sup>

On **February 28**, representatives of Green Salvation met with a judge of the Supreme Court of the Republic of Kazakhstan, V.M.Borissov, and discussed issues of compliance with the Aarhus Convention in the country. The meeting was initiated by the judge. He offered to review Green Salvation's court experience for the Supreme Court. The review was sent to V.M.Borissov in April.

On **February 28**, representatives of Green Salvation met with the leader of the National Center for Human Rights, V.A.Kalyuzhny, and discussed issues related to the Aarhus Convention's Compliance Committee. In April, Green Salvation sent V.A.Kalyuzhny a summary of its judicial experience.

On **November 21**, Green Salvation held a press conference at the Kazakhstani Press Club in regards to Kazakhstan's compliance with the Aarhus Convention and decision II/5a.

On **May 2-4, 2007**, the 7<sup>th</sup> Meeting of the Working Group of the Parties to the Aarhus Convention met in Geneva. A representative of Green Salvation made statements during two of the section meetings regarding the Republic of Kazakhstan's lack of compliance with the Convention.

On **May 8**, Green Salvation sent a new communication to the Compliance Committee. The grounds for the appeal were the inactivity of state bodies of the Republic of Kazakhstan, as a result of which the legal basis was not created for public participation in the decision-making process regarding environmental matters. On **June 22**, Green Salvation received the response that Communication ACCC/C/2007/20 falls under the Committee's mandate, but its review was postponed until information is provided by the official bodies.

On **May 30**, Green Salvation submitted to the Compliance Committee the document "Monitoring the Implementation of the Aarhus Convention in the Republic of Kazakhstan."

On **July 17-18**, the organization Access Info Europe conducted a seminar in Madrid titled "Access to Information as a Tool for Anti-Corruption & Revenue Monitoring." A Green Salvation representative presented information regarding the organization's work to utilize pre-judicial and judicial methods to defend the right of citizens to access to information, as well as information on the appeals to the Aarhus Convention Compliance Committee and to international financial organizations.

On **September 10-12**, the Second Meeting of the Aarhus Convention's Working Group on Access to Justice was held in Geneva. A Green Salvation representative shared the organization's experience with justice bodies and



drew attention to the need to strengthen control over the implementation of decisions by the Convention's bodies.

On **October 2**, Green Salvation had a meeting with Mr. C.Ozdemir, a European Parliamentary Deputy and speaker on the Central Asian region. Green Salvation representatives informed the meeting participants about Kazakhstan's lack of compliance with a number of the Aarhus Convention's statutes. On **October 8**, this information was sent in written form to Mr. C.Ozdemir.

The 8<sup>th</sup> Meeting of the Working Group of the Parties to the Aarhus Convention was held in Geneva **from October 31 to November 2**. A Green Salvation representative noted in his prepared remarks that Kazakhstan is not in compliance with the decisions of the Committee and the Second Meeting of the Parties. As before, the public does not have access to effective participation in decision-making processes. Illegal construction remains one of the main causes of the deteriorating environmental situation in Kazakhstan.

Green Salvation also sent the Convention Secretariat a letter regarding the necessity of confirming the reliability of information provided by Kazakhstan's state bodies.

On **November 15-16** in Bishkek (the Kyrgyz Republic), there was a presentation of the TACIS project "Strengthening Public Participation and Civil Society Support to the Implementation of the Aarhus Convention." A Green Salvation representative, participating in the discussion of the document, suggested the incorporation of a number of substantive corrections to the draft.

On **December 7** in the city of Petropavlovsk (Kazakhstan), the Soros Foundation—Kazakhstan conducted an inter-regional seminar on the topic of "Access to Information and Protection of the Right to Obtain Information." Green Salvation representatives participated in the seminar as head lecturers.

On **December 20-21**, there was an international conference in the city of Lvov (Ukraine) on "Defending the Right to Information," organized by the Charitable Fund "Environment. People. Law."<sup>7</sup> A Green Salvation representative gave a presentation titled "The Right to Access to Environmental Information and Problems Implementing this Right: The Example of Activities by the Ecological Society Green Salvation."

On **February 28-29, 2008**, there was a meeting in Almaty (Kazakhstan) of nongovernmental organizations of Kazakhstan, entitled "Strengthening Public Participation in the Aarhus Process." The meeting was organized by the European ECO Forum, and Green Salvation representatives actively participated in the organization and conduct of the meeting.

On **March 4**, Green Salvation was invited to collaborate by the Head of the Working Group of the regional TACIS project "Strengthening Public

Participation and Civil Society Support to Implementation of Aarhus Convention.” Green Salvation agreed to participate in a number of regional and national seminars on access to justice.

On **March 12**, the Aarhus Convention Secretariat proposed that Green Salvation prepare comments to the draft report on compliance by Kazakhstan. On **March 18**, Green Salvation submitted comments to the Secretariat. Green Salvation considers the draft report to paint an inaccurate picture of the Republic of Kazakhstan’s compliance with the Convention.

On **May 21**, Green Salvation received the final version of the document from the Aarhus Convention Secretariat. The Committee included in the document a number of the comments that Green Salvation provided to the draft report.

## Part II

The summary below contains the results of monitoring from May 2008 to January 1, 2011.

### Actions by State Bodies

On **March 10-11, 2009**, in Astana, **April 6-7**, in Atyrau, and on **May 15-16**, in Almaty, the Supreme Court, in collaboration with the OSCE and EU representative offices in Kazakhstan, conducted trainings for judges of the Republic on applying the provisions of the Aarhus Convention and national environmental legislation. The trainings included presentation of the “Educational and Practical Manual on Application of the Provision of the Aarhus Convention by the Courts of the Republic of Kazakhstan,” developed by the Supreme Court in collaboration with the OSCE representative office in Astana. The manual includes the court experience of the Ecological Society Green Salvation.

The trainings’ participants studied the existing situation on applying the environmental legislation in our country. They discussed the previous experiences of non-profit organizations that have participated in the realization of the Aarhus Convention and questions of improving the national legislation.

On **June 22**, the Constitutional Council of the Republic of Kazakhstan accepted Statement No. 09-5/1 “About the State of Constitutional Legality in the Republic of Kazakhstan.” It particularly states that in the nearest future the work on strengthening constitutional legality must include the following:

“... - development of a system of measures to realize ratified international acts by the Republic of Kazakhstan in the area of human and citizen’s rights and freedoms, and on the elimination of controversies between the national legislation and international acts, by one of the measures, through establishing of an effective legal monitoring;

- further increasing the court's role in the protection of people's rights and freedoms in pre-court procedures."

On **September 17**, in the city of Ust-Kamenogorsk, the Supreme Court, together with the OSCE Center in Astana, conducted a training for judges and non-profit organizations of the republic on applying the provisions of the Aarhus Convention and national environmental legislation.

On **November 3, 2010**, the draft national report on compliance with the Aarhus Convention was published for discussion on the Ministry of Environmental Protection's website.<sup>8</sup> But none of the public comments to this document were displayed on the website.

On **November 4**, the report was discussed in the office of the Aarhus Center.

In **December**, the government of Kazakhstan finished preparation of the national report on compliance with the requirements of the Aarhus Convention.

### **Actions of International Organizations and Kazakhstani Nonprofit Organizations**

**At the end of 2008**, a manual on applying the Aarhus Convention "Right on Access to Justice on Issues Related to the Environment" was published. The manual was prepared by the Regional Ecological Center for Central Asia. Among other things, it includes the lawsuits on protecting citizens' rights, conducted by Green Salvation.

**From September 2007 to August 2009**, the European Union implemented a project "Public Involvement and Civil Society Support in Realization of the Aarhus Convention in Central Asian Countries."

The project experts developed the following project documents, which were brought to a public discussion:

1. A comparative table for the draft Law of the Republic of Kazakhstan "About Introduction of Changes and Amendments to Some Legislative Acts of the Republic of Kazakhstan, in Order to Bring Them in Compliance with the Provisions of the Aarhus Convention."<sup>9</sup>

2. "Explanatory Note to the Comparative Table" (to the draft Law of the Republic of Kazakhstan "About Introduction of Changes and Amendments to Some Legislative Acts of the Republic of Kazakhstan, in Order to Bring Them in Compliance with the Provisions of the Aarhus Convention").<sup>10</sup>

3. "Order of the Minister of Environmental Protection of the Republic of Kazakhstan" (About introduction into the Rules on access to environmental information of an amendment related to environmental impact assessment and the decision-making process on intended economic or other activity, approved by the Order of the Minister of Environmental Protection of the Republic of Kazakhstan dated on July 25, 2007, No. 238-p).<sup>11</sup>

4. “Rules on Determining Fees for Governmental Organs Services Related to Provision of Environmental Information to Natural and Legal Persons.”<sup>12</sup>

5. “Order of the Minister of Environmental Protection of the Republic of Kazakhstan (About introduction of amendments into the Rules on conducting public hearings approved by the Order of the Minister of Environmental Protection of the Republic of Kazakhstan dated on May 7, 2007, No. 135-o).<sup>13</sup>

6. “About Approval of the Statement on Publicly Available Register of the Activities Performed with Genetically Modified Objects on the Territory of the Republic of Kazakhstan.”<sup>14</sup>

On **September 21, 2009**, the Aarhus Center of the Republic of Kazakhstan was opened in the city of Atyrau.<sup>15</sup>

The Center provides:

- public access to environmental information;
- public participation in the decision-making process on issues related to the Ural-Caspian basin environment.

The “Leading Principles for Aarhus Centers” was published in **November**. This publication states that the centers can be established on a basis of the Ministry of Environmental Protection, a non-profit organization, or OSCE projects.

### **Actions by the Ecological Society Green Salvation**

On **May 28, 2008**, a representative of the Ecological Society took part in the seminar “Raising Awareness of the Judges of the Republic of Tajikistan” (city of Dushanbe) in the framework of a TESIS project “Public Involvement and Civil Society Support in Realization of the Aarhus Convention.” The judges of Tajikistan and representatives of non-profit organizations were presented a report on the organization’s court experience and on the appeals made by the organization to the Aarhus Convention Compliance Committee.

At the end of **May**, a collection of articles “To the Third Meeting of the Parties to the Aarhus Convention” was published.

On **June 4-10**, meetings with people residing within the area between Al-Farabi, Rozybakiyev, Kozhabekov and Gagarin streets (city of Almaty) took place. The people were on a hunger strike to protest a decision of the local authorities to confiscate their plots of land for commercial development. Representatives of the organization consulted the residents on the provisions of the legislation of Kazakhstan and the Aarhus Convention. By a request and on behalf of the hunger strikers, Green Salvation prepared an appeal to the Third Meeting of the Parties to the Aarhus Convention. The appeal was signed by 18 participants of the protest campaign and was sent to the Secretariat and to the Meeting.

On **June 11-13**, a representative of Green Salvation took part in the

Third Meeting of the Parties to the Aarhus Convention (city of Riga). During the Meeting, the letter from the Almaty protesters was read. On **June 12**, in response to the letter, the Meeting participants prepared an appeal to the President, Parliament, and the Government of the Republic of Kazakhstan. The appeal was signed by 45 delegates. But the Meeting of the Parties made a resolution on Kazakhstan that did not include the conclusion of the Compliance Committee, nor the real situation in the country.<sup>16</sup> 150 copies of the collection of articles “To the Third Meeting of the Parties to the Aarhus Convention” were distributed among the Meeting participants.

On **June 17**, the appeal of the participants of the Third Meeting was officially sent to the President, Parliament, and the Government of Kazakhstan, and a copy of the appeal was given to the protest campaign participants.

On **June 16-18**, Green Salvation’s lawyer took part in the International Conference for Judges of Central Asia, devoted to the 10-year anniversary of the signing of the Aarhus Convention (city of Astana). The conference was conducted as part of the TACIS project “Public Involvement and Civil Society Support in Realization of the Aarhus Convention” together with the Supreme Court, the Ministry of Environmental Protection, and the OSCE Center in Astana. A report on Green Salvation’s court experience related to the protection of citizens’ rights was made during the meeting.

On **June 20**, non-profit human rights organizations of Kazakhstan, including Green Salvation, signed a Memorandum about joint activity on monitoring of the Republic of Kazakhstan’s performance of its responsibilities in the area of democracy development, supremacy of law, and respect of human rights and freedoms in light of Kazakhstan’s upcoming chairmanship of the OSCE (this became the basis for a coalition of non-profit organizations “Kazakhstan—OSCE 2010”).<sup>17</sup>

In **July**, information on “Monitoring of the Activity of Kazakhstan’s Courts in Compliance with the Aarhus Convention” was published on the Supreme Court’s website. The material referred to some lawsuits conducted by Green Salvation. Comments to the document were prepared by Green Salvation and sent to the author—V.M.Borissov.

In **September**, the Memorandum participants (further, the coalition “Kazakhstan—OSCE 2010”) published the joint report “Progress Review: Kazakhstan’s OSCE Commitments on Democracy and Rule of Law in Light of the Upcoming Kazakhstan’s OSCE Chairmanship,” which was distributed during the OSCE meeting on human measurement (Warsaw, September) and during the meeting of the ministers of foreign affairs of the OSCE (Helsinki, December, 2008).<sup>18</sup>

On **October 7**, Green Salvation and the non-profit organization “Crude Accountability” (Alexandria, USA) sent a letter to the participants of the

parliamentary group “Free European Alliance” and European Green Party (Paris, October 9-12, 2008), in order to attract attention to the situation regarding the human right to a favorable environment in the Republic of Kazakhstan.<sup>19</sup>

At the end of **October 2008**, an “Educational and Practical Manual on Application of the Provision of the Aarhus Convention by the Courts of the Republic of Kazakhstan” was published. Later (on **June 16, 2009**), Green Salvation prepared and addressed its comments to the manual’s authors, as the document had a number of arguable cases, the resolution of could be of interest to the public and judges.

On **February 2, 2009**, representatives of Green Salvation and the Kazakhstan International Bureau for Human Rights and Rule of Law met with T.Helland, Head of the Economic and Environmental Department of the OSCE Center in Astana. During the meeting, they discussed the situation regarding compliance of the Aarhus Convention in Kazakhstan, first of all, in the area of access to justice. As an example, they considered the lawsuit on inaction of the government of the Republic of Kazakhstan, which had lead to violation of citizens’ rights and lawful interests (residents of Berezovka village, Western Kazakhstan Oblast).

In **April**, a manual on protecting the right to a favorable environment called “Protection of Citizens’ Rights During ‘Point’-Construction Development” prepared by the lawyer A.A.Shitov, together with Green Salvation, was published on our website.

On **May 25-26**, as a part of the TACIS project, another training on the application of the Aarhus Convention and national environmental legislation for the judges of the South Kazakhstan region took place in the city of Almaty. Green Salvation representatives gave a presentation about the “Experience of the Ecological Society Green Salvation on Application of the Provisions of the Aarhus Convention on Courts.”

On **June 10**, a meeting of the participants of the coalition “Kazakhstan—OSCE 2010” took place. Green Salvation offered to prepare materials on observance of the Aarhus Convention in Kazakhstan for international meetings within the OSCE (Vena, Warsaw, Athens).

On **June 22**, participants of the coalition “Kazakhstan—OSCE 2010” conducted a briefing for representatives of diplomatic missions in Astana. The briefing included materials on the country’s performance of its commitments to the OSCE and observance of human rights in the Republic of Kazakhstan. Green Salvation prepared and distributed the following materials: “About Fulfillment of the Republic of Kazakhstan’s International Commitments Taken in Compliance with the Aarhus Convention” and “Violation of Rights of the Berezovka Village Residents.”

On **July 20**, materials were prepared regarding the observance of the human right to a favorable environment in Kazakhstan. The document was included into the universal periodical review for the Human Rights Council (UN) made by the participants of the coalition “Kazakhstan—OSCE 2010.”

On **December 10**, information on “Violations of the Human Right to a Favorable Environment in the Republic of Kazakhstan” was prepared and distributed. The material is published on Green Salvation’s website.<sup>20</sup>

On **January 28, 2010**, a Green Salvation representative took part in a round table on “Interaction of the Governmental Regulating Authorities with the Public.” During the meeting, Green Salvation’s experience was presented in the area of access to environmental information and protection of citizens’ rights to a favorable environment by judicial and pre-judicial methods.

On **October 8**, because of lack of official information about the preparation and discussion of the national report on compliance with the Aarhus Convention, Green Salvation sent a letter to the Ministry of Environmental Protection claiming that the schedule of the public consultations on the draft report has been violated.

In **November**, the organization prepared brief comments to the draft national report on compliance with the Aarhus Convention. The comments were sent to the Ministry of Environmental Protection and to the Aarhus Center.<sup>21</sup>

On **December 21**, because of lack of official information about the submission of the national report to the Secretariat of the Aarhus Convention, Green Salvation sent a request to the Ministry of Environmental Protection, in order to find out how the report had been discussed with the public; how the public comments had been considered; and when the report had been submitted to the Secretariat. On **February 15, 2011**, because of the failure of the governmental authorities to provide the requested information, Green Salvation had to initiate a lawsuit.

Translated by Michelle Kinman and Sofya Tairova.

<sup>1</sup> Letter from the Government of the Republic of Kazakhstan, October 22, 2005, No. 12-8/5206.

<sup>2</sup> <http://pravo.zakon.kz/64671-komissija-po-pravam-cheloveka-pri.html>;

<http://www.nomad.su/?a=3-200509280019>.

<sup>3</sup> [http://eco.gov.kz/proekt/pr\\_resp10.htm](http://eco.gov.kz/proekt/pr_resp10.htm).

<sup>4</sup> <http://www.greensalvation.org/index.php?page=arhus-dec-2-5a>.

<sup>5</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=36&cntnt01returnid=67>.

<sup>6</sup> <http://www.unece.org/env/documents/2006/pp/ece.mp.pp.wg.1.2006.4.e.pdf>.

<sup>7</sup> <http://www.epl.org.ua>.

<sup>8</sup> <http://www.eco.gov.kz/ruforum/viewtopic.php?f=1&t=8&sid=b3b7823c955167ebccd8b15b91e722af>.

<sup>9</sup> <http://www.aarhus.kz/forum/doc/3.doc>.

<sup>10</sup> <http://www.aarhus.kz/forum/doc/2.doc>.

<sup>11</sup> <http://www.aarhus.kz/forum/doc/6.doc>.

<sup>12</sup> <http://www.aarhus.kz/forum/doc/4.doc>.

<sup>13</sup> <http://www.aarhus.kz/forum/doc/1.doc>.

<sup>14</sup> <http://www.aarhus.kz/forum/doc/5.doc>.

<sup>15</sup> <http://aarhus.kz>.

<sup>16</sup> [http://www.unece.org/env/documents/2008/pp/mop3/ece\\_mp\\_pp\\_2008\\_5\\_add\\_5\\_e.pdf](http://www.unece.org/env/documents/2008/pp/mop3/ece_mp_pp_2008_5_add_5_e.pdf),  
[http://www.unece.org/env/pp/mop3/web/Dec\\_III\\_6c\\_compliance\\_Kazakhstan\\_v\\_2008\\_07\\_21.pdf](http://www.unece.org/env/pp/mop3/web/Dec_III_6c_compliance_Kazakhstan_v_2008_07_21.pdf).

<sup>17</sup> The Memorandum was published on the Green Salvation's website:

<http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=64&cntnt01detailtemplate=news02detail.tpl&cntnt01returnid=51>.

<sup>18</sup> <http://www.freedomhouse.org/uploads/KazakhstanProgressReview.pdf>.

<sup>19</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=77&cntnt01dateformat=%25d.%25m.%25Y&cntnt01returnid=67>.

<sup>20</sup> <http://www.greensalvation.org/index.php?page=prava-tezisy2009>.

<sup>21</sup> [http://www.greensalvation.org/uploads///Doc/2010.11.19%20remarkGS-to-orhus\\_final.rtf](http://www.greensalvation.org/uploads///Doc/2010.11.19%20remarkGS-to-orhus_final.rtf).



## Public Access to Environmental Information in Kazakhstan<sup>1</sup>

Svetlana Spatar

The right of citizens to access environmental information is ensured by national legislation and international agreements: the Constitution, the Environmental Code, the Aarhus Convention, and a number of other normative legal acts.

The Environmental Code states that “environmental information is openly available,” and that “access to specific reports and data, constituting openly available environmental information, is carried out through its provision in response to inquiries from natural and legal persons, distribution via the mass media and specialized publications, and placement on the Internet, as well as the use of other freely accessible means of communication” (article 163).

According to article 14, paragraph 1 of the Code, non-governmental organizations have the right “to receive timely, complete, and reliable environmental information from state bodies and organizations.”

The right of access to information is also guaranteed by the 2007 Law “On Procedures for Considering Appeals by Natural and Legal Persons.” Among other things, it establishes the time required for considering such appeals: “Appeals by natural and/or legal persons, the consideration of which does not require the receipt of information from other entities or officials, or verification including travel from the site of inquiry, will be considered in the course of fifteen calendar days” (article 8, paragraph 1).

Written inquiries are the lengthiest, but thus far the most effective technique for obtaining environmental information. Other methods—E-mail, the Internet—remain ineffective as a means for distribution of this information. In addition, in the event that arguments or conflicts arise, written responses are documents that can be presented in court. However, the fact that written information is frequently incomplete or of poor quality must also be taken into account.

**The main topics of inquiries by the Ecological Society Green Salvation have included the following:**

- the condition of specially protected natural territories;
- the implementation of various projects, including those having a direct impact on specially protected natural territories;
- the influence of industrial enterprises on the environment, including assessment of the impact of economic activity and industrial monitoring data;

- the state of the environment in populated areas (air, water, and soil quality);
- the state of people's health and environmental safety;
- questions regarding clarification of environmental legislation;
- violations of environmental law;
- the actions of state bodies to resolve specific environmental problems; and others.

According to the Aarhus Convention, all of this information should be easily available!

The inquiries are sent to the following addressees:

- Various ministries of the Republic of Kazakhstan (Ministry of Environmental Protection, Ministry of Public Health, Ministry of Agriculture, Ministry of Transport and Communications, Ministry of Energy and Mineral Resources, and others);
- Various committees and territorial departments of the ministries (the Forestry and Game Committee of the Ministry of Agriculture, Committee of Environmental Regulation and Control of the Ministry of Environmental Protection, and others);
- Akimats (mayors' offices) and akimats' departments (Department of Natural Resources and Regulation of Natural Resources Use, Department of Land Relations, Department of Architecture and Urban Planning, Department of the State Architectural and Construction Control, and others);
- Administrations of the specially protected natural territories (national parks, natural reserves, and others);
- Statistics Agency (territorial branches);
- Agency for Construction, Housing and Utilities;
- Sanitary and epidemiological stations;
- Prosecutor's offices and others.

On average, Green Salvation sends more than a hundred inquiries to state agencies annually (103 requests in 2005; 66 in 2006; 135 in 2007; 123 in 2008; 120 in 2009; 130 in 2010).

Green Salvation has received replies to the majority of the inquiries. In some cases, officials refused to provide information, or failed to reply altogether. As such, Green Salvation was forced to address a court in order to obtain the necessary information.

Over the last three years, the situation has improved slightly.

Thus, in 2007, denials to provide requested information compelled us to address the court 6 times,<sup>2</sup> with lawsuits to the following institutions:

- Statistics Department of Western Kazakhstan Oblast;

- Statistics Department of Karaganda Oblast;
- Akimat (mayor's office) of the city of Almaty about construction in the Medeu hollow;
- "Tsentr beton" Ltd.;
- Subsidiary State Enterprise "AlmatygorNPTSzem";
- Akimat (mayor's office) of the city of Almaty about planning construction in the Kokzhailau hollow.

In 2008, we had to address the court once,<sup>3</sup> while some other lawsuits started in 2007 were still in process.

In 2009,<sup>4</sup> we had to file a lawsuit to the court against the Ministry of Public Health because of its failure to provide the report on "Evaluation of Health Conditions of the People Living in the Area of the Karachaganak Oil and Gas Condensate Field."

**It should be noted that the majority of the lawsuits were satisfied, the actions of the state authorities were acknowledged to be illegitimate, and the requested information was provided.**

Judging from Green Salvation's experience, the following conclusions can be made.

1. State officials at times interpret the provisions of national legislation, such as the concept of "confidential information," in an arbitrary fashion.

Green Salvation contacted the Ministry of Environmental Protection, the Akimat (governor's office) of Western Kazakhstan Oblast, and the international consortium "Karachaganak Petroleum Operating B.V." to request a copy of the memorandum of mutual understanding between the three parties. The ministry and consortium both refused to provide this information, citing its confidentiality, while the Akimat provided a copy of the document.<sup>5</sup>

An analogous situation occurred when Green Salvation requested a copy of the memorandum of mutual understanding between the Ministry of Environmental Protection, the Akimat of Karaganda Oblast, and the company "Mittal Steel Temirtau." The Ministry refused and the company ignored the inquiry, while the Akimat provided the text of the memorandum.

In our view, such information should be easily accessible. For example, it could be posted on the website of the Ministry of Environmental Protection.

2. The websites of state bodies do not always provide sufficient information for decision-making purposes; therefore, numerous inquiries are needed.

3. Usually, the local executive organs ignore the inquiries to provide information, especially in large cities.

4. Replies frequently fail to contain complete information, making additional requests necessary.

5. Appealing to the courts often enables information to be obtained, but does not guarantee its completeness or quality. In addition, legal proceedings can prolong the information-gathering process for months, interfering with decision-making and creating difficulties for the organization involved.

Translated by Glenn Kempf and Sofya Tairova.

---

<sup>1</sup> The activities of the Ecological Society Green Salvation are used here as an example of the broader issue of public access to environmental information.

<sup>2</sup> <http://www.greensalvation.org/index.php?page=iski2007>.

<sup>3</sup> <http://www.greensalvation.org/index.php?page=iski2008>.

<sup>4</sup> <http://www.greensalvation.org/index.php?page=iski2009>.

<sup>5</sup> [http://www.greensalvation.org/old/Russian/Facts/Documents/memor\\_karachag\\_rus.htm](http://www.greensalvation.org/old/Russian/Facts/Documents/memor_karachag_rus.htm);  
[http://www.greensalvation.org/old/English/Facts/Documents/memor\\_karachag29.06.05.htm](http://www.greensalvation.org/old/English/Facts/Documents/memor_karachag29.06.05.htm).