

Communication to the Aarhus Convention Compliance Committee

**Information on correspondent submitting the communication**

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**State concerned**

Republic of Kazakhstan

**Facts of the communication**

On 11 November 2002, the Ecological Society Green Salvation (hereafter “ES”) wrote to the President of the National Atomic Company Kazatomprom, Mr. Jakishev, requesting him to provide calculations justifying his statement to the press on the necessity and benefits for the country of importing radioactive waste from other countries and disposing of it on the territory of the Republic of Kazakhstan. So far, the ES has had no reply from the President of the NAC.

On 4 February 2003, following unsuccessful attempts to obtain the information, the ES was forced to institute proceedings in the Almaly District Court of the City of Almaty to have the actions of the official in refusing to provide the requested information declared unlawful.

In violation of Art. 9.1 of the Convention, the Almaly District Court of the City of Almaty, the Special Interdistrict Commercial Court (SICC) and the Civil Division of the Almaty City Court spent almost four months, from 4 February 2003 to 23 May 2003, considering the question of jurisdiction

From 23 May 2003 to 13 June 2003, the SICC, in violation of Art. 154.4 of the Code of Civil Procedure of the Republic of Kazakhstan (CCP RK), which requires particulars of claim to be returned on the grounds indicated within five days of their being filed with the court (the particulars of claim were filed on 4 February 2003), considered the particulars of claim and made a determination dismissing the action ostensibly for lack of a power of attorney from the citizens whose interests the ES was protecting in court. This, in its turn, is also a violation of Art. 9.1 of the Convention.

In response to a special appeal against this determination, the Civil Division of the Almaty City Court issued a decision dismissing the appeal.

Following an application for review to the City Court, on 6 October the President of the City Court informed the ES in a letter that there were no grounds for reviewing the SICC's determination or the decision of the Civil Division of the City Court.

In response to an application for review to the Civil Division of the Supreme Court (SC) of the Republic of Kazakhstan, on 5 January 2004 the Division made a submission to the Review Division of the City Court requesting that the SICC's determination and the decision of the Civil Division of the City Court be reconsidered.

However, on 26 January 2004, the Review Division of the City Court upheld the SICC's determination and the decision of the Civil Division of the City Court.

In our opinion, the Republic of Kazakhstan, by becoming party to the Convention, has recognized the right of the public to have access to information, to participate in decision-making and to have access to justice in environmental matters. However, an official is refusing to allow the public to exercise its right of access to information relating to the decision-making process, and the SICC and the City Court are defending the actions of that official by refusing to allow the public to exercise its right of access to justice, in violation of the legislation in force.

### **Nature of alleged non-compliance**

The communication concerns a case of infringement of the provisions of the Convention on access to information and on the right of access to justice.

### **Provisions of the Convention relevant for the communication**

Article 4.1, Article 4.7, Article 6.6 and Article 9.1.

### **Use of domestic remedies or other international procedures**

Between 20 June 2003 and 26 November 2003, letters were sent to the Office of the Public Prosecutor of the Republic of Kazakhstan. In response to requests to file an objection to the determination by the SICC, the Prosecutor of the Almaty District of the City of Almaty, the Prosecutor of the City of Almaty and the Prosecutor General of the Republic of Kazakhstan all replied that there were no grounds for filing an objection to the decision of the courts.

Other international remedies were not invoked as Kazakhstan is not a member of the Council of Europe.

### **Confidentiality**

Not requested.

**Supporting documentation (copies, not originals)**

*CONSTITUTION OF THE REPUBLIC OF KAZAKHSTAN*, adopted 30.08.1995

(as amended on 7 October 1998)

Article 18

3. State bodies, voluntary associations, officials and the media shall give every citizen the opportunity to acquaint himself with documents, decisions and sources of information that affect his rights and interests.

Article 20

2. Everyone shall have the right freely to obtain and disseminate information by any means not prohibited by law. The list of items constituting state secrets of the Republic of Kazakhstan shall be determined by law.

Article 31

1. The State shall endeavour to ensure an environment favourable for human life and health.

2. Officials shall be held accountable under the law for the concealment of facts and circumstances that endanger human life or health.

Article 33

1. Citizens of the Republic of Kazakhstan shall have the right to participate in the management of public affairs, directly and through their representatives, and to appeal in person and to send individual and collective appeals to state bodies and local authorities.

*Decree No. 2340 of the President of the Republic of Kazakhstan, having the force of law, of 19 June 1995, on the procedure for considering petitions by citizens*

Article 3. The right of citizens to petition

For the purpose of protecting their own rights and legitimate interests, as well as the legitimate interests of other natural or legal persons, society or the State, citizens shall have the right to address petitions to authorities and their officials.

Article 6. Time limits for considering petitions

Petitions by citizens shall be considered and decisions in respect of those petitions shall be taken within one month of their being received by the authority, and where no further investigation or verification is required in not more than 15 days. Where further verification is required, the time limit may be extended by the head of the corresponding authority, but not by more than one month, in which case the petitioner shall be so notified.

*ENVIRONMENTAL PROTECTION ACT* of 15 July 1997 (as amended and supplemented by the acts of the Republic of Kazakhstan of 24.12.98, 11.05.99 No. 381-1, of 29.11.99 No. 488-1, and of 04.06.01 No. 205-II)

Article 6. Rights and obligations of voluntary associations in the field of environmental protection

1. In carrying out their activities in the field of environmental protection, voluntary organizations shall have the right:

to obtain from state bodies and organizations timely, full and reliable information on the state of the environment and measures to improve it.

*Code of Civil Procedure of the Republic of Kazakhstan*

(Astana, 13 July 1999 No. 411-1 ZRK)

Article 154. Return of particulars of claim

1. The judge shall return particulars of claim if:

(4) the claim has been signed by a person not authorized to sign it;

2. In returning particulars of claim the judge shall issue a reasoned determination indicating the court to which the claimant should apply if the court before which the case has been brought lacks jurisdiction, or how to overcome the obstacles preventing his case from being considered. The determination to return particulars of claim must be issued within five days of the particulars being received by the court and handed or sent to the claimant together with all the documents attached to the claim.

Article 278. Filing particulars of claim

1. Citizens and legal persons shall have the right to challenge a decision or action (inaction) of a state body, local authority, voluntary association, organization, official or public servant directly in court. Prior appeal to a superior body or organization or a higher-ranking official shall not be a prerequisite for filing particulars of claim or for their being admitted by the court for consideration and disposition on the merits.

Article 279. Decisions and actions (inaction) of state bodies, local authorities, voluntary associations, organizations, officials and public servants which can be challenged in court

1. The decisions and actions (inaction) of state bodies, local authorities, voluntary associations, organizations, officials and public servants which can be challenged in court shall include collective and individual decisions and actions (inaction) as a result of which:

- (1) the rights, freedoms and legally protected interests of citizens and legal persons are infringed;
- (2) a citizen is hindered from exercising his rights and freedoms or a legal person from asserting its rights and legally protected interests;

**Summary** (see Attachment 1)

S.G. Kuratov  
Chairman, Ecological Society Green Salvation

5 February 2004