

Right to access to justice in environmental matters in the Republic of Kazakhstan

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The Republic of Kazakhstan is the ninth largest country in the world. The country's population is about 17 million people. Kazakhstan is rich in minerals and has significant reserves of oil and gas.¹

During the development of Kazakhstan following independence, state institutions declined and those with political power suppressed civil rights and liberties of others. The Republic has become a major source of raw materials for many developed countries. One of the main causes of poverty and environmental destruction in Kazakhstan comes from major violations of the human right to a healthy environment as the demand for the country's natural resources increases.²

The crisis of the Kazakh judicial system has become acute and reflects the general crisis of the country's governmental bodies. The judges in the country are appointed directly by the President and their independence is quite limited. Administration of justice is completely subordinated to the power of the executive branch. The courts appear to be more concerned with the political will of the authorities, rather than the rule of law. Thus, the courts have become a tool for violent repression of political opponents, economic competitors and citizens critical of the government.

The situation is further complicated by a high level of corruption, deeply rooted within the judicial system. In April 2011, six judges of the Supreme Court of the Republic of Kazakhstan were dismissed from their positions and charged with corruption. Two of them were sentenced to long prison terms.³

Lawyers with many years of experience suggest that access to justice in Kazakhstan has become much worse than it was during the Soviet era. As a result, public confidence in the judicial system has dramatically declined. According to the Supreme Court of the Republic of Kazakhstan, more than 4000 complaints against judges were filed in the first nine months of 2013. There is an average of two complaints pending for each judge in the country.⁴ All this leads to increased social tension and creates a threat that individuals will search for solutions to their problems outside the legal framework.

For example, in October 2007, more than one hundred Almaty residents protested outside the Almaty City Court against court decisions on compulsory seizure of their land and property by the municipal authorities. The protesters broke into the court building and clashed with the police.⁵

¹ <http://www.akorda.kz/ru/category/kazakhstan>, date accessed 11.05.2014.

² Kazakhstan's Implementation of its OSCE Obligations to Observe the Human Right to a Healthy Environment, 2011, http://crudeaccountability.org/wp-content/uploads/2012/10/2011_Report-OSCE_Eng.pdf

³ <http://news.mail.ru/inworld/kazakhstan/incident/12115304/>, date accessed 25.02.2013.

⁴ <http://newskaz.ru/society/20131024/5702064.html>, date accessed 24.10.2013.

⁵ www.respublika.kz, date accessed 05.10.2007.

The environmental group “Green Salvation”, which has a long-standing practice of seeking judicial protection of citizens' environmental rights in the country, points to the following as the main challenges impeding access to justice:

- refusal to register claims about the inaction of state authorities; claims are rejected under any pretext;
- the courts tend to exclude government agencies from being a defendant party [*editor's note*: as a result, plaintiffs may not sue them];
- claims are not reviewed on the merits, and judges go beyond the stated claims;
- judges allow arbitrary interpretation of laws;
- judges allow arbitrary interpretation of international conventions;
- court decisions are not enforced for years;
- the Prosecutor's Office is unable to ensure uniform application of the law, and the courts do not take its opinion into consideration.⁶

The perfect illustration of these problems is a lawsuit to protect the rights of Berezovka villagers. The village is located on the border of the sanitary protection zone (SPZ) of the Karachaganak oil and gas condensate field. The field is operated by the Karachaganak Petroleum Operating, B.V. consortium (KPO), which includes companies such as: ENI (Italy), BG Group (UK), Chevron (USA), Lukoil (Russia), and KazMunaiGaz (Kazakhstan)⁷. Active development of the field has led to considerable environmental pollution that is detrimental to the health and property of Berezovka residents. However, their repeated requests to the authorities and KPO to resolve the issue of resettlement led nowhere.⁸

On 18 June 2008, Green Salvation, Kazakhstan International Bureau for Human Rights and Rule of Law and the Republican public association "Shanyrak" filed a claim against the Government of the Republic of Kazakhstan, alleging that its inaction has led to the violation of rights of Berezovka residents. The plaintiffs alleged that the government and responsible public authorities violated national legislation and the Aarhus Convention by reducing the SPZ and did not take measures to ensure the safety of Berezovka villagers. The plaintiffs asked the court to overturn the decision to reduce the SPZ and order the government to resolve the issue of resettlement of Berezovka residents. The plaintiffs also sought compensation for material and moral damages. For nearly nine months a court in Astana refused to hear the case and then when it finally agreed to hear the case, the court refused to consider the merits. Finally, in April 2009, the court heard the lawsuit despite multiple violations of procedural rules, and it ruled that reduction of the SPZ was illegal. The court dismissed the plaintiffs' remaining claims. In December 2009, the decision was appealed to the Supreme Court of the Republic of Kazakhstan, and the case was sent back for a new trial at the same court. On 30 April 2010, Astana City Court held a session in Berezovka village. On 1 June 2010, the court ruled on the resettlement of residents and compensation to farmers whose homes and lands were in the five-kilometer sanitary protection zone. Ultimately, the decision benefited only two families in Berezovka village. Despite subsequent complaints, and appeals to the Supreme Court of the Republic of Kazakhstan by Green Salvation, the decision of the court came into force on 11 November 2010. The villagers' epic struggle to enforce the decision has now begun. Due to the refusal of defendants to comply with the ruling voluntarily, the plaintiffs twice sought an enforcement order from the regional authority responsible for the execution of judicial decisions. However, no responsible authority took any effective measures. In October 2013, a letter about the inaction of the judicial authorities was sent to the Ministry of Justice. Until now the court's

⁶ Letter of ecological society “Green salvation” to the Aarhus Convention Compliance Committee as of 07.06.2013.

⁷ <http://www.kpo.kz/about-kpo.html>, date accessed 11.05.2014

⁸ <http://crudeaccountability.org/campaigns/karachaganak/>, date accessed 11.05.2014.

decision to relocate two families and compensate them has not been enforced. People continue to live in an environmentally hazardous area.⁹

The judicial system has acquired a distinct class character where it is practically impossible for ordinary citizens to defend their rights in court if they are up against officials or wealthy people. The result is that the judicial system is discredited and citizens' trust in it is undermined.¹⁰ The right to judicial protection has become illusory in the country.

The crisis of the Kazakh judicial system is alarming at the international level as well. The Parties to the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, in June 2011, formally invited the Kazakh Government to “[...]thoroughly examine[...], with appropriate involvement of the public, the relevant environmental and procedural legislation, as well as the relevant case law, to identify whether it sufficiently provides judicial and other review authorities with the possibility to provide adequate and effective remedies in the course of judicial review”.¹¹

Kazakhstan is not a member of Council of Europe, and the Republic is not a party to the European Convention for the Protection of Human Rights and Fundamental Freedoms, which means its citizens cannot petition the European Court of Human Rights (Strasbourg). To date, the Strasbourg court is one of the few real means to restrict the abuse of power by the authorities in post-Soviet nations, since its decisions are binding.

⁹ <http://www.greensalvation.org/index.php?page=iski2014>, date accessed 11.05.2014.

¹⁰ *Newsletter «Green Salvation» №19*, 2010, p.4-5.

¹¹ http://www.unece.org/fileadmin/DAM/env/pp/mop4/Documents/ece_mp_pp_2011_L_14_e.pdf