

Application of the Aarhus Convention - the basis of public access to justice

Access to justice is the primary means of ensuring compliance with the Aarhus Convention (Article 9). This is the third element of the Convention, which provides for the mandatory nature of compliance with environmental legislation, strengthens mechanism of enforcement of national legislation in the field of environmental law.

It should be noted that the feature of the Aarhus Convention is the fact that this international treaty fixes procedural rules designed to ensure and guarantee the public's right of access to justice in matters relating to the environment.

Access to justice requires, along with the legislative consolidation of the guaranteed right to appeal to the court by every citizen, the presence of such factors such as:

- availability of courts to the population, providing timely reception of applications;
- reasonable and fair legal costs;
- reasonable terms of consideration and resolution of cases;
- timely and high-quality production of judicial acts, protocols of juridical session, their smooth provision to sides of litigation;
- timely resolution of appeals and cassation appeals, petitions challenging the judicial acts on supervisory review;
- simplicity of procedural provisions;
- guarantee of free legal assistance to those in need;
- effective enforcement of judicial decisions, etc.

The Kyrgyz Republic has no special legal act that would regulate access to environmental information. This legislation block consists of legislative norms of a general nature, and some of the regulations in the field of environmental protection legislation. The mechanism of information acquisition is described only in a single law on provision of information by public authorities and local governments. Some laws in the sphere of nature and environment protection have the right to access to information that can be combined in single mane "environmental", but to a greater extent – it is the obligation of authorized government bodies to inform the public about certain events and facts.

The Kyrgyz Republic has created all the conditions and possibilities for the courts in the resolution of cases of this type, apply the basic regulations governing consideration / settlement of disputes on issues regarding environment: they are, in particular the Constitution, Civil Code, Land Code, Water Code, Laws on Environmental Protection, On Subsoil, On Specially Protected Natural Areas and the Code of Civil Procedure of the Kyrgyz Republic, and others.

Courts in their activity in addition to the abovementioned laws also use norms of the Code of Civil Procedure of the Kyrgyz Republic, Law of the Kyrgyz Republic "On Environmental Protection", Resolution of the Government of the Kyrgyz Republic No.668 dated 7 September 2004 "On the liability for damage caused by corruption of land", techniques for determining fees for environmental pollution in the Kyrgyz Republic , approved by the Resolution of the Government of the Kyrgyz Republic according to which legal and natural persons, including foreign, causing damage to the environment, health and property of citizens, legal persons and state by polluting the environment, damaging, destruction, unsustainable use of natural resources, destruction of natural ecological systems and other environmental offenses, are obliged to reimburse it in full, in accordance the Civil Code of the Kyrgyz Republic and other regulatory legal acts of the Kyrgyz Republic.

Compensation for damage caused to the environment as a result of environmental offenses, shall be made voluntarily or by a court decision in accordance with the duly approved rates and methods of calculating the amount of damage, and in their absence - at actual cost on restoration of broken state of the environment, taking into account the losses incurred, including loss of profits.

In Kyrgyzstan, the public's right to access to justice in dealing with environmentally sensitive issues relates to the means of influence on the state environmental policy, and is recognized as the components of the general principle of access to environmental information and public participation in decision-making. It appears that access to justice provides making the environmentally sensitive decisions through the judicial review of actions (inactions) of state bodies and officials that violate citizens' environmental rights and environmental legislation as a whole, appeal to the court for

suspension or termination of economic and other activities that have a harmful effect on the environment, that is, provides an additional form of public participation in environmental decision-making.

The right to judicial protection is understood as "the right to protection of rights", to activities of the court, which is realized by bringing an action or a complaint. With civil procedural point, we must distinguish between the protection in the form of action proceedings, and in the form of proceedings in cases arising from administrative legal relations. Judicial review of decisions and actions that violate the environmental rights of citizens is the possibility to public to carry out activities aimed at addressing of violations of rights. So, the forms of public involvement, implemented by the courts, are appealing the decisions and actions that violate the environmental rights of citizens, and submission of claim for suspension or termination of economic and other activities which are creating a risk or causing adverse effects on the environment.

The study showed that in judicial practice there are questions on proper execution of writs for the judicial protection of rights of the public, as well as on the jurisdiction of cases on the claims of environmental associations.

Courts of Kyrgyzstan, implementing the provisions of the international agreement and national legislation, initiate proceedings on claims (statements) of environmental public associations for protection of rights of an indefinite number of persons on issues relating to the environment.

It should be noted that those persons who asserted a claim to protect the interests of others, enjoy all the procedural rights and bear all the procedural obligations of the claimant, except for the right to conclude a settlement agreement. Relinquishment by these organs and persons of the claim does not deprive the person in whose interests a case was initiated, the right to demand consideration of case in essence. If a person in whose interests a case was initiated does not support the filed claim, the court leaves the claim (statement) undecided, if the rights of third parties are not infringed.

In addition, representatives under a commission in the court may be empowered organizations that are given the right to protect the rights and interests of members of these organizations according to the law, statute or regulation, as well as authorized organizations that are given the right to protect the rights and interests of others according to law, statute or regulation.

In virtue of the rules of the Law "On Environmental Protection", environmental public associations have the right to represent and protect the rights and legitimate interests of its members and citizens in the courts and other public authorities, other public associations.

And when applications are submitted by them, that is, by environmental associations to their advantage, as well as in the interests of an indefinite number of persons on the actions of state bodies, local authorities, they are considered by inter-district courts on administrative and economic cases at the place of location of the state body, local authority, whose decision (action, inaction) is appealed.

Therefore, access to justice, established by the Aarhus Convention provides additional legal mechanisms for public participation in environmental decisions-making, as well as gives the coercive nature to the implementation of environmental rights, strengthens the legislation enforcement mechanism in the field of environment.

In order to implement the Aarhus Convention, the experts, that were me and Boltobaeva, have developed the academic program. This program included one-day training, training module and handouts on the topic "Application of the Aarhus Convention and national environmental legislation of the Kyrgyz Republic". The academic program and training module on this topic have been agreed and certified by the Higher School of Justice, Supreme Court of the Kyrgyz Republic and Council of Judges of the Kyrgyz Republic. This module disclosed full information about the Aarhus Convention, use of the basic principles and provisions of the Convention in court proceedings subject to national legislation.

One-day training for judges and professionals of courts for judges and professionals of courts "Application of provision of the Aarhus Convention and national environmental legislation of the Kyrgyz Republic" were carried out in the cities of Osh and Bishkek. The main objective of the training was to familiarize the participants with the provisions of the Aarhus Convention, its use in consideration of environmental protection cases. Also questions of the Convention consistency with the national legislation in the field of environmental protection.

This training was conducted in partnership with the Supreme Court of the Kyrgyz Republic, Higher School of Justice at the Supreme Court of the Kyrgyz Republic, State Agency for Environmental

Protection and Forestry under the Government of the Kyrgyz Republic, Aarhus Centers in Bishkek and Osh, with financial support from the OSCE Centre in Bishkek.

The following issues were considered and discussed during the training:

- Overview of the Aarhus Convention and the regulatory acts of the Kyrgyz Republic in the field of ecology and environmental protection;
- The right of access to environmental information and the right to participate in decisions affecting the environment;
- The right to access to justice;
- The competence of the authorized bodies in the field of ecology and environmental protection;
- Practical application of the Aarhus Convention by the courts and national legislation in the field of environment and ecology.

As a result of training the level of knowledge among the participants in the field of ecology and environmental protection rose in average for 48.5%, which will continue to guide the resolution in the field of environmental disputes and environmental protection standards of the Aarhus Convention, implemented in the national legislation of the Kyrgyz Republic.

It should be noted that during the training the following disadvantages were identified: lack of legal statistics of prosecutors bodies, as well as the absence in courts of primary statistical information on cases related to provision implementation of the Aarhus Convention. Thus, maintaining a separate statistical graphs on the above categories of cases are not provided by court reporting forms.

Hence, the Supreme Court of the Kyrgyz Republic plans to make changes in statistical forms of civil cases, that would maintain a record of cases in the field of the environment on the claims and allegations of individuals and environmental organizations in the implementation of the Aarhus Convention.

At present, the Supreme Court of the Kyrgyz Republic is planning to generalize the judicial practice and update Provision of the Supreme Court's Plenum "On judicial practice in civil cases relating to the violation of nature protection legislation".

Thank you for attention.