

For the Sixth Meeting of the Parties to the Aarhus Convention



GREEN SALVATION HERALD 2017

A wide-angle landscape photograph showing rolling green hills in the foreground, a valley with a river in the middle ground, and a range of mountains with snow-capped peaks in the background. The sky is filled with soft, white and grey clouds, suggesting a late afternoon or early morning setting. The overall mood is peaceful and majestic.

People protect what they love

Jacques Yves Cousteau

GREEN SALVATION HERALD

FOR THE SIXTH MEETING OF THE PARTIES TO THE AARHUS CONVENTION

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



Almaty - Kazakhstan
2017

CONTENTS

ACKNOWLEDGMENTS.....	4
FROM THE EDITORS.....	5
THE ECOLOGICAL SOCIETY GREEN SALVATION ...	8

PART I. IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS

TO THE QUESTION OF COMPLIANCE WITH THE AARHUS CONVENTION IN THE REPUBLIC OF KAZAKHSTAN <i>Sergey Kuratov, Alma Omarbekova</i>	12
SITE OF ANCIENT SETTLEMENT TALGAR—THE WORLD HERITAGE IS IN DANGER! <i>Sergey Kuratov, Nataliya Medvedeva</i>	22
CONVENTION ON BIOLOGICAL DIVERSITY. RED BOOK PLANTS ARE UNDER A THREAT OF DESTRUCTION <i>Valeriy Krylov, Sergey Kuratov</i>	33

PART II. LEGAL SITUATION IN THE REPUBLIC OF KAZAKHSTAN

ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS <i>Svetlana Katorcha, Sergey Kuratov, Nataliya Medvedeva, Alma Omarbekova</i>	45
NOVELS OF THE NEW CIVIL PROCEDURAL CODE OF THE REPUBLIC OF KAZAKHSTAN <i>Alma Omarbekova</i>	60
ENFORCEMENT PROCEEDINGS OF THE SUPREME COURT RULING <i>Lubov Gatina</i>	68
ENVIRONMENTAL CODE. 10 YEARS OF CONTRADICTIONS AND INEFFICIENCY <i>Valeriy Krylov, Sergey Kuratov</i>	74
PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION IN KAZAKHSTAN <i>Svetlana Spatar</i>	80
HOW TO PRESERVE HERITAGE OF THE PAST? <i>Valeriy Krylov</i>	85
WHY IS THE LAW BAD AND WHY DOESN'T IT PROTECT NATIONAL PARKS? <i>Valeriy Krylov, Sergey Kuratov</i>	93

ACKNOWLEDGMENTS

Ecological Society Green Salvation expresses sincere gratitude to the sponsors, whose long-term support allows providing legal assistance to people. Using pre-trial and judicial methods, our organization protects human rights on life in the environment favourable for health and well-being, thanks to the National Endowment for Democracy (USA) and The Sigrid Rausing Trust (UK).

The editorial staff of the Green Salvation Herald expresses their deep gratitude to all those who assisted in preparation of the materials of this issue for publication.

Special thanks are given to Sofya Tairova for her tedious work on translations.

FROM THE EDITORS

Effective environmental protection requires clear and strict legal guidelines.

*—John Galbraith, American economist,
one of the eminent theorists
of the XX century*

The Republic of Kazakhstan approached the Sixth Meeting of the Parties to the Aarhus Convention with bleak results. The main factor determining the socio-ecological situation in the country remains the state's policy of economic growth at all costs in the absence of environmental policy. The dominance of extractive industries has created a dangerous dependence of the national economy on world commodity prices. Under the plausible pretext of reducing costs and improving the investment climate, extracting companies work tirelessly to "soften" the environmental legislation and alleviate the tax "burden." As a result, numerous amendments to laws do not contribute to environmental protection, but only increase legal chaos.

Similar to Russian colleagues, large private entrepreneurs "do not build a market strategy, but lead a 'natural' struggle for state resources."¹ It is not a secret for anyone that all legal and illegal means are used. According to the corruption perception index, in 2016, Kazakhstan ranked 131 out of 176 countries.² Virtually all branches of state power were affected by corruption.³

The implemented economic policy negatively affects the natural environment. The process of desertification continues unabated,⁴ and there is a growing scarcity of water resources.⁵ Cities are attacking specially protected natural areas, destroying natural ecological systems. Pollution of lakes, rivers, glaciers is increasing. Steady smog has become a typical phenomenon for many cities of Kazakhstan, including its capital—Astana.⁶ The problem of recycling industrial and domestic waste remains unresolved for many years and is becoming worse with every year. Cities and towns are becoming surrounded by huge dumpsites which absorb fertile agricultural lands, river banks, forests. The expanded obligations of the producers,⁷ enacted since January 1, 2016 to ensure collection, transportation, recycling, and utilization of waste have not yet yielded tangible results.⁸

The country's unsatisfactory compliance with international obligations, adopted in accordance with the Aarhus and other environmental conventions, is regrettable. Public access to objective environmental information, decision-making and justice has deteriorated noticeably. This is largely due

to an ineffective monitoring system and intentional hiding of information by governmental agencies and commercial entities. Information about sickness rate caused by pollution is either absent or hidden.

Public participation in the decision-making process, as before, does not go beyond formal hearings with “smoothed” protocols and, in fact, exists only on paper. The law “About Public Councils” adopted in 2015, did not eliminate the contradictions, but only led to minor improvements and camouflaged the conflict. “Public councils in Kazakhstan are the state’s response to a situation in which representative bodies are not representative to the full extent. The authorities use the councils trying to monitor public mood, get some feedback about their own activity.”⁹ Reports on their first steps, for example, published on the website of the Public Fund “Information and Resource Centre” of Almaty,¹⁰ do not inspire optimism.

Access to justice in environmental matters has deteriorated significantly. Courts openly take the side of offenders and state bodies that protect their interests. Some decisions of the courts are so absurd that they allow us to speak about a conscious creation of obstacles to the circulation of the public to the organs of justice.

The situation with the implementation of conventions on World Heritage, biological diversity and other international treaties, in which the public plays an important role, is no better. Environmental conventions are grossly violated, primarily by state bodies, including agencies directly responsible for their implementation. Courts and the prosecutor’s office, as a rule, do not take into account the requirements of the conventions and the norms of the Constitution, which stipulates the priority of international treaties before the laws of the Republic of Kazakhstan. Only the competent intervention of international bodies stops illegal actions. A vivid example is the UNESCO World Heritage Site—Talgar site of ancient settlement which was partially destroyed in 2014-2016, even despite of the principled stand of the World Heritage Committee and ICOMOS.

Since 2005, the Ecological Society Green Salvation has been publishing materials on implementation and application of the Aarhus Convention in the Republic of Kazakhstan. On the pages of the Herald, issued on the occasion of the Sixth Meeting of the Parties of the Convention, which covers the period from 2014 to early 2017, the reader will find analytical materials, criticism, opinions.

It starts with an analysis of the national report of the Republic of Kazakhstan on implementation of the convention. Further, materials are published on the country’s implementation of the conventions on the World Heritage and biological diversity. A great deal of attention is paid to criticism of national legislation. Many innovations in the laws do not comply with international norms, reduce their effectiveness, and create a basis for human rights violations. Official bodies

are trying to hide the real state of things and embellish the situation. The material on access to environmental information is devoted to this.

A significant part of the Herald is devoted to practical activities of the Ecological Society Green Salvation on defence of rights and interests of citizens, undefined number of persons, and the state using judicial and pre-trial methods. Facts presented in the materials allow making a conclusion that state bodies and courts create serious obstacles for access to justice. Despite the abundance of official information about various activities allegedly aimed at improving compliance with the Aarhus Convention, the practice speaks otherwise. Application of the norms of the Convention in the work of state bodies and courts is sporadic and unsystematic.

The editorial board hopes that the Herald will draw attention of international organizations, scientists, and general public to the difficult social and environmental situation that has developed in the country.

-
- 1 O.Bessonova. Image of the Future of Russia in the Context of the Theory of Distributing Economy, <http://polit.ru/article/2008/12/05/bessonova> (last visited April 10, 2017).
 - 2 Transparency International, http://www.transparency.org/news/feature/corruption_perceptions_index_2016.
 - 3 Transparency International: The Most Corrupt Institutions in Kazakhstan, <http://kazday.kz/2016/11/20/transparency-international-samye-korruptirovannye-vedomstva-v-kz/>.
 - 4 Concept on Conservation and Sustainable Utilization of Biological Diversity in the Republic of Kazakhstan Till 2030. Astana: GEF—UNDP, 2015, pp.12-13, 21, <http://www.fhc.kz/conventions/files/kz-nbsap-rus.pdf>.
 - 5 The State Program of Water Resources Management and Transition of Kazakhstan to a “Green Economy”: “The limited and expected water shortage may become an important obstacle to further economic growth in Kazakhstan (loss of missed economic opportunities—7-8 billion dollars per year),” https://www.unece.org/fileadmin/DAM/env/documents/2014/WAT/06Jun_24_geneva/Presentations/Zhakenov_RU.pdf.
 - 6 Residents of Astana Complain of Smog and Smell of Burning, https://tengrinews.kz/kazakhstan_news/jiteli-astanyi-jaluyutsya-na-smog-i-zapah-gari-310212/ (last visited April 3, 2017).
 - 7 The Environmental Code was supplemented by chapter 41-1 “Extended Obligations of Producers (importers)” in accordance with the Law of the Republic of Kazakhstan dated on November 17, 2015, No.407-V. See also: Resolution of the Government of the Republic of Kazakhstan dated on January 27, 2016, No.28 “On Approval of the Rules for Implementation of the Expanded Obligations of Producers (importers).”
 - 8 What is ROP?, <https://www.recycle.kz/> (last visited May 3, 2017).
 - 9 Adil Nurmakov. The Game of Imitation in Kazakhstan, <https://vlast.kz/avtory/22064-igra-v-imitaciu-po-kazahstanski.html> (last visited March 10, 2017).
 - 10 Public Council of Almaty, <http://infoirc.kz/category/%d0%be%d0%b1%d1%89%d0%b5%d1%81%d1%82%d0%b2%d0%b5%d0%bd%d0%bd%d1%8b%d0%b5-%d1%81%d0%be%d0%b2%d0%b5%d1%82%d1%8b/>.

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.

Main Areas of Green Salvation's Activities Include

1. Defending the Human Right to a Favourable Environment

The organization defends rights utilizing pre-trial and judicial methods, seeking strict observance of national legislation and international agreements. On average, Green Salvation files ten lawsuits per year and conducts about 200 legal consultations.

In 2004 and 2007, it became necessary for Green Salvation to appeal to the Aarhus Convention Compliance Committee. In the case of two of the appeals, the Committee acknowledged noncompliance with individual Convention statutes by the Republic of Kazakhstan and violations of citizens' rights to participate in decision-making processes and to access to justice with regard to environmental concerns.

In 2013, together with representatives of the public, a new statement was filed due to violation of the public right on participation in the decision-making process. In June 2017, the Compliance Committee acknowledged violation of a number of the Convention's provisions.

2. Participation in the Development of Environmental Protection Legislation

Green Salvation participated in the official discussions concerning the law "About Protection of the Natural Environment in the Kazakh Soviet Socialist Republic" (1991) and the laws of the Republic of Kazakhstan "About Environmental Protection" (1997), "About Environmental Assessment" (1997), "About Specially Protected Natural Territories" (1997), "About Land" (2001), "About Tourist Activities in the Republic of Kazakhstan" (2001), the Forestry Code (2003), the Land Code (2003), Environmental Code (2007) 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).

In 2016, the organization took part in a discussion of amendments to the Law "About Specially Protected Natural Territories." Remarks and suggestions of the organization were submitted to the Parliament.

3. Environmental Awareness and Education

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

Green Salvation collaborates with the local and foreign mass media, participates in television and radio programs, and organizes exhibitions.

In 2016, more than 150 articles highlighting activities of Green Salvation or using materials of the organization were published in mass media.

In 2002, Green Salvation began a video program. The following films were created: "Legacy of the Nuclear Age" (2002), "The Wealth of Nature—In Whose Hands?" (2003), "Passengers in Forgotten Way Stations" (2003), "Canyon" and "The Earth Does Not Belong to a Man..." (2005), "Behind a Window" (2007), "Let Us Protect Kok-Jailau" (2013), "How We Defended National Parks" (2014), "Let Us Protect First Spring Flowers of Kazakhstan!" (2016), and others. Several of these films have been awarded diplomas at international festivals. Several films were given to the State Republican Archive of Cinema and Photo Documents and Sound Records.

In 2007, Green Salvation began a video discussion club "Green Lens." In 2002, Green Salvation launched a website in Russian and English.

4. Environmental Actions

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. Green Salvation also participated in the following international campaigns: International Right to Know, Publish What You Pay, and Caspian Revenue Watch.

Green Salvation actively participates in actions to protect the integrity of the environmental system of protected natural territories. Green Salvation is collaborating with administrations of the Ile-Alatau State National Nature Park and the "Altyn-Emel" Nature Park. Video monitoring is regularly conducted on the park's territory.

In March 2009, Green Salvation launched a successful campaign against construction of high voltage electrical power lines on the territories of the national parks "Altyn-Emel" and Charyn.

Starting from 2011, Green Salvation supports the public campaign "Protect Kok-Jailau!" initiated against construction of a mountain ski resort on the territory of the Ile-Alatau State National Natural Park.

Starting from 2014, the organization conducts a campaign on protection of the World Heritage site—Talgar site of ancient settlement in Almaty oblast.

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

The electronic database and book and video library of the organization contain various documents, reference and educational materials. They are used by activists of non-governmental organizations, specialists, teachers, students, and schoolchildren.

The Ecological Society Green Salvation calls for collaboration to protect the Earth!

PART I

IMPLEMENTATION OF INTERNATIONAL OBLIGATIONS



TO THE QUESTION OF COMPLIANCE WITH THE AARHUS CONVENTION IN THE REPUBLIC OF KAZAKHSTAN

Sergey Kuratov,
Alma Omarbekova, lawyer,
Ecological Society Green Salvation,
Almaty, Kazakhstan

The mission of telling the truth becomes an anachronism at the moment when neither the seller, nor the consumer insists that the goods correspond to this quality. And if it's normal, then it's time to die. But it should be remembered that this is our own fault, because we are tolerating this situation.

*—Krzysztof Zanussi, Polish screenwriter,
director and producer for TV and cinema*

In autumn 2017, the Sixth Meeting of the Parties of the Aarhus Convention will take place in the city of Budva, Republic of Montenegro. The Republic of Kazakhstan is a party to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters. The country prepared a report on implementation of the requirements of the Convention (hereinafter—Report) for the years since the Fifth Meeting of the Parties.

The present material reviews the process of preparing the Report and its sections on public access to information, decision-making, and justice from the point of view of the public concerned.

How the National Report Was Prepared

In 2014, the Ministry of Environment and Water Resources was eliminated. Therefore, the next “Report on the implementation of the Aarhus Convention in accordance with Decision IV/4” for 2014-2016 was prepared by the Ministry of Energy. It was assigned with the main functions of environmental protection.¹ The text of the Report was published on the Ministry’s website on October 17, 2016² and later on the website of the Aarhus Centre of the Republic of Kazakhstan.³

The first section of the Report states that it was prepared on the basis of judicial practice, official reports on compliance with the decision V/9i, websites of the state and non-governmental organizations. The project was “sent out by e-mail to a network of non-governmental organizations on June 5, 2016, and was also

posted for public discussion on the websites of the Ministry of Energy of the Republic of Kazakhstan and the Aarhus Centre. On July 15, 2016, the Report was brought for a discussion” at a round table devoted to the implementation of the Aarhus Convention in Kazakhstan. The Report and other official publications leave it unclear whether the public concerned had any comments and additions to the content of the Report, and how it was taken into account.

On October 26, 2016, the Information and Analytical Centre for Environmental Protection of the Ministry of Energy organized a Skype conference to discuss the Report with the public. Representatives of non-governmental organizations “EcoMuseum” (city of Karaganda), Ecological Society Green Salvation (city of Almaty), and Kokshetau Aarhus Centre took part in the discussion. The Report and official websites do not provide any information on whether the comments and suggestions of the participants of the discussion were taken into account.

In early 2017, the Working Group on Public Participation of the Environmental Forum of Non-governmental Organizations of the Republic of Kazakhstan and the Ecological Society Green Salvation (hereinafter—ES) prepared an alternative report on Kazakhstan’s implementation of the Aarhus Convention. It is planned to be posted on the Convention website in the section of Reports of international and regional non-governmental organizations.⁴

Thus, the process of preparing and discussing the Report on implementation of the Convention in 2014-2016 cannot be called transparent. It was drawn up on the basis of official documents that need careful verification. In fact, only two discussions with the public took place in 2016, and these discussions cannot be considered nationwide. In 2017, the Ministry did not even try to continue the discussion. Access to information about development of the Report, about introduction of changes and its approval is not available. It remains unclear how many versions of the Report exist. It is unclear whether it is completed or not.

The Report was published in Kazakh language on the website of the Convention.⁵ Judging by the date on the first page, it was sent by the Ministry of Energy on November 16, 2016. As in the version mentioned above, it does not have a date and confirmation of official approval. Up until July 10, 2017, the Report was not translated into any of the official languages of the Convention.

General Remarks

The report was carried out in an optimistic manner. The main conclusion that follows from its content can be formulated as follows: “In general, despite of some shortcomings, Kazakhstan is moving in the right direction.”

The authors of the Report do not indicate that for the entire period of its independence, Kazakhstan has not developed the state environmental policy. In the draft reforms “100 Concrete Steps,”⁶ there is not even a mention of the need to take measures to improve the environmental situation. Indirectly,

environmental problems are addressed in paragraphs 94, 97, 99, which talk about improving access to information, increasing participation of citizens in the decision-making process, and strengthening the role of public councils. But this document is not linked in any way to the concept of transition to the “green economy.”⁷

The lack of environmental policy results in numerous contradictions in state programs, inconsistencies in the actions of state agencies, and poor quality legislation that is more in private rather than in public interest. These political “blunders” result in billions in losses for the budget, deterioration of the ecological situation and health of the people of Kazakhstan.

Authors of the Report describe carelessly the laws adopted during the reporting period. Many of these normative legal acts were adopted long before the reporting period. It seems that the authors use numerous excerpts from the laws to fill out the report and give it a more solid look. They did not point out that changes in environmental legislation are made very often. As a result, there are numerous contradictions between various regulatory legal acts; difficulties arise in their practical application. And the national legislation is not well coordinated with the requirements of international conventions.

A serious obstacle to resolving environmental issues is the continuing redistribution of environmental functions between various agencies: from concentration of power in local executive bodies, to liquidation of the Ministry of Environment and Water Resources.

In this regard, the speech of the Minister of Energy at a meeting of the Ministry’s collegium on February 16, 2017, was very indicative. It summed up the results of 2016 and announced plans for 2017. In the published speech of the Minister, there is not a single word about preparation of the Report and the planned participation of the representatives of Kazakhstan in the work of the Sixth Meeting of the Parties.⁸

In general, the Report suffers from a lack of materials on practical application of the Convention. For example, in its first section, it is said that the data used in preparation of the Report includes materials on judicial practice. However, the Report provides no analysis of specific cases. Much of the information relates to 2009-2010, that is, to the period covered in the previous report. This testifies to the absence of more recent statistics and poor preparation of the Report.

Compliance with the Article 4

The authors of the Report do not provide convincing evidence supporting the improvement of access to information. In Section VIII “Obstacles encountered in the implementation of Article 4,” the authors of the Report only say that the “Kazgidromet” issues newsletters in which “the data is presented in an aggregated form.”

Section IX of the Report on practical application of the Article 4 and on availability of any statistical data, includes only a few general phrases. There is no analysis of statistics of replies and denials to public requests and reasons for them. Question of the quality of information is not touched by the authors either. Apparently, they do not doubt that state bodies are always perfect. References to the adopted laws as evidence of improvement of the situation with access to information do not sound convincing.

The ES experience shows that the law “About Access to Information,” adopted in November 2015, did not bring a noticeable improvement to the situation. The state standard of the service for provision of environmental information did not affect the speed, nor quality of the information received.⁹ Officials, knowing well that organs of justice protect them in all situations, do not hesitate to hide, distort, and provide the public with untrue information.

The ES experience shows that it is especially difficult to obtain information about boundaries of land plots, in particular, about sanitary protection zones of industrial enterprises. Even information about the exact boundaries of national parks and results of forest management works is being hidden, probably, in the interests of influential tenants.

Refusals to provide information by the state bodies are becoming increasingly cynical and provocative. Some agencies state that they do not consider themselves to be state bodies and, therefore, are not required to provide information. Others refer to large volumes of information that are, allegedly, practically impossible to provide. Some tell the public that no accurate information was provided about the offenders, and therefore, the authorized body cannot begin the audit. And some say that no agreements were signed with the public to provide the information.¹⁰

Hiding information by public authorities and provision of false information are serious obstacles to effective public participation in the decision-making process.¹¹

Compliance with the Article 6

The sections of the Report on public participation in decision-making contain a number of serious criticisms, which partially repeat the comments made in the 2014 Report. For example, in the section XVI, the authors acknowledge the lack of a legal mechanism for “involving the public at the very beginning of the process of making environmentally significant decisions—selecting and reserving land plots for planned economic activities” to be an obstacle to public participation.

“The Land Code does not provide for public participation at this stage (paragraph 1, Article 43).

The lack of coordination between the basic national legal norms of land legislation and the norms of environmental legislation—Chapter 6 of the EC [Environmental Code] and the Rules for conducting of the SEA [State Environmental Assessment] can make it difficult to implement the provisions of the paragraph 4, Article 6 of the AC [Aarhus Convention]. The rules set out the requirements for the content of the materials submitted to the SEA. In accordance with the subparagraphs 2 and 5.11.1 and paragraph 18 of these Rules, the act of choosing a land plot and land management in itself is not a part of SEA, these documents are submitted to the SEA together with other documentation. Materials of documented public participation (protocols) at the stage of selecting a land plot as an integral part of the EIA [Environmental Impact Assessment] are also not mentioned as a part of the documentation.

At the later stages of project development documentation, all design decisions are already tied to the specific characteristics of a particular land plot.”

The authors of the Report should have given concrete examples of such “neutralization” of the public. It should have been pointed out that public hearings are not held even for large sites. Often, public hearings are held formally, with violations of legal requirements. By the way, this was mentioned in the Report of 2014 in the section XVI.¹² Over the past years, the situation did not change.

In the ES experience, there is an example of falsification of public hearings and misleading of a judge and employees of an authorized body. In cases when no hearings were held, authorities say that, according to the legislation, hearings are not required.¹³ At the same time, officials often interpret the rules of law at their own will. All these facts indicate that no control over organization, conducting, and documenting of public hearings is carried out.

In the section XVII, the authors note that on April 8, 2016, the Environmental Code was amended by the Article 57-2. It identifies projects that are subjected to an obligatory discussion with the public. On June 10, 2016, a “List of Types of Economic Activities Which Projects Are to Be Submitted to Public Hearings” was approved by the order of the Minister of Energy No.240. “The list of economic activities was brought in line with the Annex 1 of the Aarhus Convention.”

Introduction of the Article 57-2 and the List created a contradiction with the paragraph 1 of the Article 35 and subparagraph 14, paragraph 1, Article 41 of the Environmental Code. According to the latter, “environmental impact assessment is mandatory for all types of economic and other activities.” It includes “materials on accounting of public opinion, drawn up by protocols and containing conclusions based on results of public discussion of environmental aspects of a proposed activity.” In other words, it is unclear whether public opinion should now be taken into account when evaluating any kind of activity?

The authors of the Report do not indicate that the changes made to the “Rules for Conducting Public Hearings” on June 21, 2016, significantly limited the opportunity for public participation¹⁴. And introduction of public hearings in the form of a survey created a fertile ground for corruption and formalism.

The general trend of changes can be described as follows. By creation of a variety of public councils, state bodies seek to bring criticism of their activities into an official controlled framework. At the same time, they are working to mitigate environmental legislation in the interests of large exploiters of natural resources and to legislatively restrict public participation in the decision-making process.

It seems that in the case with the List of activities to be submitted to public hearings, the reference to the Aarhus Convention is used more to weaken the national legislation than to strengthen the rule of law. Recall that, according to the paragraph 1b of Article 6 of the Convention, the parties apply “the provisions of this Article to decisions on proposed activities not listed in the Annex 1 which may have a significant effect on the environment” in accordance with their national legislation. In the paragraph 20 of the Annex 1, it is stated that for any activities not covered by the paragraphs 1-19 of the Annex, “public participation is provided for under an environmental impact assessment procedure in accordance with the national legislation.” In other words, the Convention allows stricter national requirements. In 2005, based on these provisions specifically, the Aarhus Convention Compliance Committee made a decision recognizing the arguments in the statement of the Ecological Society Green Salvation to be justified.¹⁵

Compliance with the Article 7

In the section XXI of the Report, the authors point to the obstacles encountered in the implementation of Article 7, partially repeating the text of the 2014 Report. “The Rules for Conducting of Public Hearings do not cover all the variety of forms and criteria for effectiveness (timeliness, completeness, and adequacy) of public participation in the process of making decisions significant for the environment during preparation of state, sectorial, and regional programs of development for industries, schemes for allocating production forces.”

But the authors of the Report did not mention anything about the appeal from the public of the city of Almaty sent on May 31, 2013, to the Aarhus Convention Compliance Committee regarding violations of the Articles 6 and 7.¹⁶ The statement was filed in connection with the fact that the public was not given an opportunity to participate in the discussion of the “Plan for Development of World Class Ski Resorts in the Almaty Region and Near the City of Almaty.” Nevertheless, it was approved by the Governmental Decision No.1761 dated on December 29, 2012. After this, the development of the project for construction

of the ski resort “Kokzhailau” began. This led to a formation of a large social movement against construction of the resort.

The Report does not indicate that a month after the public filed the statement to the Committee; the Environmental Code was amended.¹⁷ In particular, the paragraph 1.2 was removed from the Article 47 “Objects of State Environmental Assessment.” It stated that “... the following are subject to mandatory state environmental assessment:

2) projects of state, sectorial, and regional programs with accompanying materials of environmental impact assessment.”

The removal of this provision from the Environmental Code clearly contradicts the requirements of the Aarhus Convention and creates serious obstacles to implementation of the Article 7. The amendments resulted in contradictions with the paragraph 9, Article 13, and paragraph 10, Article 14 of the Environmental Code. They recognize the rights of individuals and public associations “to participate in the process of preparing plans and programs related to the environment.” But recognition of a right without a real mechanism for its implementation cannot ensure compliance with the Article 7 of the Convention.¹⁸

Compliance with the Article 9

Since the work on the Report was, apparently, completed in October 2016, the section XXVIII does not mention the Supreme Court’s regulatory decision of November 25, 2016 No.8 “About Some Questions of Application of the Environmental Legislation of the Republic of Kazakhstan by the Courts on Civil Cases.”¹⁹ It was adopted not only to improve the work of the courts, but also to improve the country’s image before the Sixth Meeting of the Parties to the Aarhus Convention. For this reason, it does not mention other international conventions ratified by the country, which provisions are also poorly integrated into the national legislation.²⁰

The authors of the Report did not find any obstacles to public access to justice! Therefore, the section XXIX in the Report remained unfilled. And the Supreme Court believes that Kazakhstan’s judicial practice on application of the Aarhus Convention should be recommended for study by the countries-participants of the Convention.²¹

The authors should have, at least, mentioned that utilization of the same deadlines for appealing to courts with environmental cases as with other civil cases is a serious problem. According to the Article 294 of the Civil Procedural Code: “A citizen and a legal entity are entitled to apply to a court within three months from the day they become aware of violations of rights, freedoms, and lawful interests.” Ecological violations can be long-term, and the impact of pollution on the environment and human cannot be determined immediately.

Therefore, the three-month term contributes to the fact that offenders tend to avoid punishment.

It should also be noted that, according to the paragraph 3, Article 455 of the Civil Procedural Code, decisions of the Compliance Committee and the Meeting of the Parties are considered to be neither newly discovered, nor new circumstances for the courts of the country. That is, the public cannot use the decisions made in its favour by the Compliance Committee, even for resumption of a trial. Although, according to the paragraph 3, Article 4 of the Constitution, paragraph 3, Article 2 of the Civil Procedural Code, paragraph 2, Article 2 of the Environmental Code, and other laws, ratified international agreements take precedence over the laws of Kazakhstan.

When comparing the section XXX with the similar section of the Report for 2014, it is apparent that the texts are almost identical. Thus, one of the main sections²² of the Report is underdeveloped. It is interesting to note that on February 27-28, 2017, a representative of the Supreme Court participated in the 10th Meeting of the Task Force on Access to Justice under the Aarhus Convention. “During the meeting, participants were presented reports of a group of international experts on the situation with access to justice within the framework of implementation of the Aarhus Convention in Central and Eastern Europe, Central Asia, and Kazakhstan. The experts accepted the remark of the judge of Kazakhstan about their use of obsolete data in the reports for 2016.”²³

General Comments in Relation to the Goal of the Convention

Analysis of the situation shows that no noticeable improvements towards implementation of the Aarhus Convention in Kazakhstan take place. Lack of environmental policy, contradictory regulatory legal acts and their poor observance significantly limit implementation of the Convention requirements in the country.

The authors of the Report should have taken into consideration opinions of international experts in regards to the environmental situation in the country. For instance, the Organization of Economic Collaboration and Development prepared a review of the situation in Kazakhstan, including the existing environmental problems.²⁴ The authors of the review are fairly sceptical about the grandiose plans of transition to the “green economy” and sustainable development at the existing economic policy.

1 “An authorized organ in implementation of the Aarhus Convention is the Ministry of Energy of the RK and the ‘Information and Analytical Center of Environmental Protection’ of the Ministry of Energy.” Report on implementation of the Aarhus Convention in accordance with the Decision IV/4. Published on October 17, 2016. Section II, <http://energo.gov.kz/index.php?id=8340> (last visited June 7, 2017).

- Deadline to submit the reports by the Parties—March 15, 2017.
- 2 Report on implementation..., <http://energo.gov.kz/index.php?id=8340> (last visited June 7, 2017).
 - 3 Report on implementation..., <http://aarhus.ecogofond.kz/2-1/1-7> (last visited June 14, 2017). Aarhus Center of the Republic of Kazakhstan was founded on March 20, 2009, on the basis of the “Information and Analytical Center of Environmental Protection” in order to implement the provisions of the Aarhus Convention, <http://aarhus.ecogofond.kz/ru/1-8/>.
 - 4 UNECE. 2017 Reports by international, regional and non-governmental organizations, http://www.unece.org/env/pp/reports_organisations_2017.html (last visited July 1, 2017).
 - 5 UNECE, http://www.unece.org/env/pp/reports_trc_implementation_2017.html.
 - 6 Nation plan—100 Concrete Steps to Implement Five Institutional Reforms of the Head of the State, Nursultan Nazarbayev (May 2015), https://online.zakon.kz/Document/?doc_id=31977084#pos=0;0.
 - 7 Concept of Transition of the Republic of Kazakhstan to the “Green Economy.” Adopted by the Decree of the President of the Republic of Kazakhstan No.577 on May 30, 2013.
 - 8 Environmental Issues Reviewed at the Collegium of the Ministry of Energy of the Republic of Kazakhstan. Republic’s specialized newspaper “Ecology of Kazakhstan,” No.1 (036) March 2017, <http://aarhus.ecogofond.kz/wp-content/uploads/2015/12/20170331.pdf> (last visited June 16, 2017).
 - 9 Standard of the state service “Provision of Environmental Information.” Adopted by the order of the Minister of Energy No.301 on April 23, 2015.
 - 10 Yevgueniy Zhovtis. Interested in Nature Protection? Sign an Agreement!, http://212.154.211.85.dial.online.kz/outlook/interesuetes_ohranoj_prirody_zakljuchajte_dogovor (last visited June 21, 2017).
 - 11 For more details, please, see the material titled “Public Access to Environmental Information in Kazakhstan” in this issue of the Herald, p.80.
 - 12 Report on implementation of the Aarhus Convention for 2014. Section XVI.
“An updated version of the Rules for conducting public hearings (Order No.50-o of the Ministry of Environmental Protection of the Republic of Kazakhstan of March 26, 2013), which excludes paragraph 21 (“Public hearings are conducted regardless of the number of public representatives present, including the public concerned, who arrived at the appointed time”), does not exclude the possibility of formal public hearings without comprehensive consideration of all possible consequences of the planned economic activity, i.e. basic principles of the EIA”, <http://aarhus.ecogofond.kz/2-1/1-7/>.
 - 13 Reply of the Department of Passenger Transportation and Autoroads of the City of Almaty dated on June 19, 2017, No.3m-K-129, to the request of the Ecological Society Green Salvation.
 - 14 Rules for Conducting Public Hearings (with amendments as of June 21, 2016), http://adilet.zan.kz/rus/docs/V070004687_#z6.
 - 15 UNECE. Communication from the Ecological Society Green Salvation ACCC/C/2004/02, <http://www.unece.org/env/pp/compliance/Compliancecommittee/02TableKazakhstan.html>.
 - 16 UNECE: Communication from the Public of the City of Almaty ACCC/C/2013/088, <http://www.unece.org/env/pp/compliance/compliancecommittee/88tablekaz.html>.
 - 17 Law “On Introduction of Amendments to Certain Legislative Acts of the Republic of Kazakhstan Related to Brining them in Compliance with the System of State Planning of the Republic of Kazakhstan” dated on July 3, 2013, No.124-V, Article 1, paragraph 5.
 - 18 The letter of the Ministry of Environment and Water Resources dated on April 3, 2014, sent to the Compliance Committee, refers to public councils. Their task is to engage the public in developing recommendations on improving the legislation and participation in conservation activities. Article 7 of the Convention does not stipulate that public participation shall be limited by a framework of specially created structures similar to the public councils, http://www.unece.org/fileadmin/DAM/env/pp/compliance/C2013-88/Correspondence_Party_concerned/Response_to_communication/Response_to_communication.pdf.
 - 19 The authors of the Report do not mention that the courts do not follow the Supreme Court’s normative resolutions regulating application of international agreements, namely: the Supreme

Court's regulatory resolution No.1 of July 10, 2008, "About Application of the Norms of International Agreements of the Republic of Kazakhstan," the regulatory resolution No.8 of November 25, 2016, "About Some Questions of Application of the Environmental Legislation of the Republic of Kazakhstan by the Courts on Civil Cases."

- 20 In this regard, the ES submitted a statement to the Supreme Court with a suggestion to adopt a normative resolution on application of other nature protection conventions by the courts.
- 21 Judicial Practice of Kazakhstan in Implementation of the Aarhus Convention Will Be Recommended to the Countries-participants of the Convention, <http://sud.gov.kz/rus/news/sudebnaya-praktika-kazahstana-po-primeneniyu-orhusskoy-konvencii-budet-rekomendovana-stranam> (last visited June 7, 2017).
- 22 Aarhus Center of the Republic of Kazakhstan, <http://aarhus.ecogofond.kz/2-1/1-7/> (last visited June 26, 2017).
- 23 Judicial Practice of Kazakhstan in Implementation of the Aarhus Convention...
- 24 "Multi-dimensional review of Kazakhstan—Volume 1—Initial Assessment," OECD, 2016, <http://www.oecd.org/development/mdcr/>; http://www.oecd-ilibrary.org/development/multi-dimensional-review-of-kazakhstan_9789264269200-en.

SITE OF ANCIENT SETTLEMENT TALGAR— THE WORLD HERITAGE IS IN DANGER!

Sergey Kuratov,
Nataliya Medvedeva,
Ecological Society Green Salvation,
Almaty, Kazakhstan

Looks like this incident has high chances to be described in textbooks and international studies on the World Heritage.

—*N.Dushkina, ICOMOS expert*

Grandiose Prospects

We constantly hear appeals to preserve our cultural and natural heritage from the highest podiums. Debates on tourism development and its big significance for the economy are held at all levels. For example, the “Concept of Cultural Policy of the Republic of Kazakhstan” says: “Kazakhstan can become one of the centres of development of the world culture and art, historical science, archaeology and art history, leading international school of enhancing professional mastery and creative growth.”¹

Let us try and estimate what Almaty oblast, for example, can offer to foreign tourists? Pyramids, aqueducts, temples, fortresses, majestic ruins of once prospering cities? Unfortunately, there is none of that here. But there are burial mounds, petroglyphs, barely noticeable sites of ancient settlements. Not many, but some still exist.

Some of the most remarkable monuments are small settlements once located along the Great Silk Road. Unfortunately, majority of them are almost completely destroyed and barely seen on the ground. But among them, there are sites which were given the honour to stand alongside with the most remarkable creations of humankind.

In 2014, China, Kazakhstan, and Kyrgyzstan prepared a joint nomination “Chang’an-Tianshan Silk Road Corridor” and submitted it to the World Heritage Committee. That is how the site of ancient settlement Talgar located close to the city of Almaty, was included into the UNESCO World Heritage List.

The “Concept of Cultural Policy...” says: “A special interest is presented by the unique archaeological landscape Tamgaly with petroglyphs, mountain chain of Zhetysu Alatau with petroglyphs Yeshkiolmes included into the UNESCO World Heritage Tentative List of Sites in the Republic of Kazakhstan, and also Issyk burial mounds and sites included into the serial trans-national nomination

“Silk Road” (Boraldai Sak burial mounds, sites of ancient settlements Talgar, Kayalyk, Karamergen).”²

Seems like such documents demonstrate the most serious intentions and responsible attitude to protection of the remarkable monuments of history and nature. However...

However...

In fall 2014, a Chinese delegation came to Talgar with an intention to inspect the sites located in Kazakhstan, and was extremely surprised. Across the archaeological monument, there were markings for construction of an autoroad to the mountain ski resort “Ak-Bulak.” In a few meters from the site’s rampart, construction of a bridge across Talgar River was already completed, so that mountain-skiers going to the resort could save 30 or 40 minutes of their invaluable time! What a truly state-wide need! For its realization, funds were allocated from the state and local budgets. According to the official information, construction and reconstruction of the autoroad “Birlik-Almalyk-Ryskulov-Kazstroy-Ak-Bulak” will total up in 3.8672 billion tenge.³

Chinese experts understood everything right away and noted that the construction was conducted in violation of the Articles 18, 33, 35, 36 of the Law of the Republic of Kazakhstan “About Protection and Utilization of Sites of Historical and Cultural Heritage.” They drew attention to the contradictions between the land and heritage legislations, pointed out a lack of proper coordination between the relevant state organs. The delegates specifically highlighted a lack of awareness among the officials at almost all levels of what “World Heritage” is, what its legal status is, and what guarantees must be provided by the state, in order to secure its integrity.⁴

After that, there was a huge scandal. The construction was stopped, it was promised to do everything according to the law, build the road bypassing the site, and provide security to protect the monument... But in early June 2016, the construction works resumed. A private archaeological company conducted excavation works trying to prove that the site did not contain anything valuable and the scientists of Kazakhstan, China, and the World Heritage Committee knew nothing about archaeology!

Unfortunately, it is not the first time when our officials and businessmen demonstrate such attitude to the monuments of culture and nature. If we recall recent deeds of primitive market extremists, the list will go for dozens of pages. The oldest Central Park of Culture and Recreation in Almaty was brought to a pitiful state. Tens of thousands of trees in cities and towns of Kazakhstan were cut in favour of parking lots, gas stations, business-centres, banal advertisement. Once blossoming alpine meadows of Chymbulak natural landmark was turned into a rocky desert after reconstruction of the international mountain ski resort.

In the sake of what great goals or bright future does this total war against cultural heritage and nature take place? What is the reason for violation of laws and international obligations? The reason is to gain profit. And the most importantly, to do it at the state's expense! That is why so many one-day enterprises circle around the state orders. They collect fortune "pollen" from budget "flowers" and then disappear. After that, they could not care less.

And What about Requirements of the Law?

The dry juridical language of the law "About Protection and Utilization of Sites of Historical and Cultural Heritage" stipulates: "Monuments of history and culture in the Republic of Kazakhstan are subjected to obligatory protection and preservation" (Article 5).

In the paragraph 1, Article 203 of the Criminal Code, it is clearly indicated: "Intentional destruction or damage of monuments of history, culture, natural complexes or sites, which are under the state protection ... shall be punished by imprisonment for the period of three to seven years."

According to the Article 26 of the law "About Protection and Utilization of Sites of Historical and Cultural Heritage," in our country, monuments are classified into three categories of significance: international, state-wide, and local. Talgar site is a monument of international significance, included into the UNESCO World Heritage List.

On behalf of the Republic of Kazakhstan, the authority of a proprietor of the monuments of history and culture of international significance belongs to the authorized organ, i.e. the Ministry of Culture and Sports (Article 11). And of course, who if not the proprietor must "undertake measures to ensure integrity of monuments of history and culture" (Article 13).

The Ministry must execute control, management of the World Heritage site, and monitoring its condition. But the monitoring did not take place and the management system developed by the Convention, was not applied at the site.

Situation with popularization of the world heritage is deplorable. Not only the Ministry failed to organize public hearings in Talgar before nomination of the site into the World Heritage List. It even did not inform the local population about it after it was included into the List.⁵ Majority of the local residents completely do not understand what is happening at the "wasteland" where it is so convenient to graze livestock and play football.

But apparently, not only the public was unaware of the happenings at the site. In 2015, Kazakhstan presented a report about conditions of monuments protection in the country to the World Heritage Committee.⁶ The report mentioned nothing about construction of the bridge and the road; nothing was said about construction of new residential homes in the protection zone of the site of the ancient settlement.⁷

Expert of the International Council on Monuments and Sites (hereafter—ICOMOS), N.O.Dushkina says: “If we are talking about settlements of the Great Silk Road in Kazakhstan, studies about them should be a part of the school history program. So that the people understood that it is not a football field, nor a place to graze livestock. That this is a national history and culture which is very easy to destroy and impossible to restore. It is necessary to realize that when such destruction happens, traces of memory and cultural identity of the country are erased. And if we are talking about the World Heritage, then not only Kazakhstanis, but the world as a whole loses the values which we are possessing right now.”⁸

We tried to make the Ministry of Culture remember about the authorities given to it and addressed to a court. Passed all instances, including the Supreme Court. But the attempt of the Ecological Society Green Salvation to receive comprehensive information about what was happening and to raise a question about the factual lack of action on part of the Ministry failed.

Courts of all instances... “approved” the inaction of the authorized organ! It turns out that the construction of the road, destroyed rampart, torn apart banner with a description of the world heritage site, roaring heavy machinery, grazing sheep, and residential homes in the buffer zone—all of that is legal?!

ICOMOS Experts Dotted the i’s and Crossed the t’s

In order to untangle these legal wires, with an official request from the Republic of Kazakhstan, the ICOMOS mission visited the country on March 21-23, 2016. One of its goals was to determine the impact from construction of the road on the outstanding universal value, integrity, and authenticity of Talgar site of ancient settlement.

Indeed, a credit should be given to the ICOMOS experts, they dotted the i’s and crossed the t’s, identifying the causes of the unsightly situation.

In their opinion, what caused such confusion, to put it softly? The reason is a lack of coordination between different state organs, both on the state-wide and local levels.⁹

Provisions of the national legislation and requirements of the Convention were violated.

But what was especially surprising to the ICOMOS representatives—the conclusions made on the basis of the excavations conducted at the Talgar site by a private archaeological firm. The firm’s employees stated that they “did not find proves of presence of a cultural archaeological layer.”¹⁰

Probably, shocked by what they saw and heard, the ICOMOS experts were adamant with their conclusions.

They recommended to immediately declare a moratorium over construction of the road to the mountain ski resort and develop an option which would not

affect the settlement and its buffer zone, take a decision about dismantling of the bridge over Talgar River.

The mission indicated that it was necessary to:

- enhance control over compliance with the law “About Protection and Utilization of Sites of Historical and Cultural Heritage” and bring it in accordance with the terminology and mechanisms of the Convention;
- enhance the mechanism of compliance of the Convention in the country;
- introduce amendments to the Land Code, in order to prevent destruction of monuments;
- urgently create an effective system for coordination between state organs of all levels;
- stop the reconstruction on the territory of the settlement which is not founded on comprehensive and detailed documentation. Present the project of reconstruction to the World Heritage Centre;
- conduct archaeological research using methods which do not destroy sites;
- announce a moratorium over construction in the buffer zone and review a question about removal of the new constructions;
- develop a master plan of the buffer zone, in order to stop individual construction and development. Master plan shall be presented to the World Heritage Centre.

It should be noted that in its report, the ICOMOS mission specifically reminded that according to the Article 1 of the law “About Protection and Utilization of Sites of Historical and Cultural Heritage,” international agreements ratified by the Republic of Kazakhstan have a priority over the national legislation.¹¹

But the ICOMOS mission left, and spring came. Construction works, like Phoenix bird, revived after the withering report. Again, dump trucks scurry about, construction machinery rumbles. By August, the dumping of fill dirt for the road bed reached the southeast end of the settlement; a huge pile of gravel was dumped on the settlement, probably, to continue the works. Fencing was broken in several places. The rampart was subjected to another “modernization.” Its base was trimmed by bulldozers, and dirt was dumped on its top.

Decision of the World Heritage Committee

The 40th session of the World Heritage Committee took place in Istanbul in July, 2016.¹² One of the points on the agenda was related to the failure to implement the requirements of the Convention by Kazakhstan. The country which in 2013, was selected to be a part of the World Heritage Committee¹³ cannot provide safeguarding of its own monuments! Decision about Kazakhstan’s compliance with the Convention requirements was adopted during a meeting on July 13th.

The Committee agreed with the main conclusions of the ICOMOS mission and indicated that it was necessary:

– for the authorities to address the recommendations of the ICOMOS with regard to protection, management and awareness-raising and to take all necessary actions to ensure the safeguarding of the authenticity and integrity of the Talgar component site of the serial property;

– to invite, as soon as possible, a joint World Heritage Centre/ICOMOS Reactive Monitoring mission to the Talgar component site and other sites of the serial property in Kazakhstan, to consider the implementation of the recommendations of the Advisory mission and the progress accomplished with the development of management plans for all components sites in Kazakhstan;

– to submit to the World Heritage Centre, by 1 December 2017, a joint updated report on the state of conservation of the property and the implementation of the above stated, for examination by the World Heritage Committee at its 42nd session in 2018.¹⁴

The public concerned by the development on the territory of the Talgar site addressed various instances. On July 11, 2016, a letter was sent to the General Prosecutor's Office.

The Prosecutor's Office decided not to delve into the matter, did not conduct its own research with an on-site visit, but instead, took on trust the information received from the Ministry of Culture. When the construction of the road already went in full speed right at the site of the ancient settlement itself, we received a reply of the following content: "According to the letter of the Ministry of Culture and Sports, the project of construction is modified; the autoroad is built bypassing the site of ancient settlement. Borders of the site's conservation zone are defined; a state land act is prepared, renewed construction documents passed the archaeological assessment."¹⁵

The developers explain that the reason for the rushed construction of the road is that it should connect Almaty with the mountain ski resort "Ak-Bulak" and "Alatau" cross country skiing and biathlon stadium. World Student Games starting January 29, 2017, were planned to be held there. The developers tried to convince that huge funds were already invested in this project, and alternative projects were not considered.¹⁶

On October 3, 2016, concerned by this situation, our organization addressed the International University Sports Federation and the Directorate of Preparation and Conducting of the 28th World Winter Student Games 2017 in the city of Almaty with a request to help with preservation of the ancient settlement Talgar and stop its destruction.

The Directorate replied that "realization of this project is not a part of the program of preparation of sports venues of the 28th World Winter Student Games ... But if the road "Birlik-Almalyk-Ryskulov-Bereke-Ak-Bulak" is transitioned to operation stage by the time when the Games take place, this road

will be used as an alternative way of transporting participants of the Students Games to the “Alatau” Cross Country Skiing and Biathlon Stadium.”¹⁷

And only on October 27, when the south part of the settlement was already destroyed, the Deputy Prime-Minister of Kazakhstan, Imangali Tasmagambetov, conducted an on-site visit to the construction site. Akim of Almaty, B.Baybek, and the Minister of Culture, A.Mukhamediuly, participated in the meeting.

“Tasmagambetov noted that it is necessary to undertake a number of measures, in order to keep the medieval settlement in the UNESCO Cultural Heritage List, and to continue archaeological research.”

He instructed “to stop all types of construction works at the territory of the Talgar ancient settlement ... design and implement construction of a new bypass road outside of the conservation zone.”¹⁸

In early November, 2016, an international monitoring mission came to Kazakhstan again. The world heritage sites were inspected by the Chief of Asia and Pacific Unit of the World Heritage Centre, Mr. Feng Jing, and ICOMOS expert, Natalya Olegovna Dushkina. On November 8, they visited the Talgar site accompanied by representatives of the Ministry of Culture, National Commission for UNESCO, local officials, the construction project developers, archaeologists, public and media representatives.

By that time, the construction workers managed to practically fully cover up a huge trench dug through the south part of the settlement. Informational stands were urgently installed at the territory of the monument from four sides. However, construction of a bridge over Talgar River was continued even in presence of such a respectable commission. Experts of the World Heritage Centre and ICOMOS expressed their extreme astonishment regarding the situation.

Traditional Questions: Who Is Guilty and What Is Next?

On the basis of the collected material, the experts will prepare a comprehensive report, but even a preliminary evaluation of the situation demonstrates their serious concern.

In her interview to Almaty architects, N.O.Dushkina said: “As a result, [the mission] came to a conclusion that construction of the road was an action planned long time ago and registered at the city’s master plan, that there were governmental decrees taken at the highest level, that financing was allocated for the project development and construction. But at the same time, a full disconnection with the Ministry of Culture and the National Commission for UNESCO took place. Until the present moment, interests of preservation of this site as the World Heritage are in conflict with what happened and is still happening there.”¹⁹

The Ministry of Culture and Sports is doing everything to seem not to be involved in the above described events. But specifically the Ministry, as a proprietor, is responsible to “undertake measures for safeguarding historical and cultural monuments.”²⁰ But all accusations fall on the local executive organs. But can the local executive organs afford having on-staff archaeologists, restaurateurs, experts in world heritage, in order to conduct the most complex assessments, restoration works, drawing of archaeological maps?!

In short, while the investigation of who is responsible for what, our primitive market extremists are using the state money to destroy the national property, paying attention neither to the national legislation, nor the international conventions. As a result—millions of wasted public funds, disfigured site of the world heritage, spoiled international reputation, and additional budget expenses to “fix” the situation. And what is next? Will the strict decision of the World Heritage Committee teach them something?

Conclusions

Which problems in the system of the world heritage conservation were exposed during the events described above?

1. Barbaric destruction of the monument became a result of the inaction of the governmental authorities who gave in to the violators of the law. Neither the Prosecutor’s Office, nor the law enforcement organs, nor the courts, nor the ministries, nor the government made enough effort, in order to protect the world heritage site. Destruction of the monument was stopped only after intervention from the Convention agencies!

2. Absolute ignoring of the international obligations of Kazakhstan. Neglect of the decision of the World Heritage Committee adopted in July 2016 at the 40th session.²¹

3. The situation could not be resolved fast because of imperfections and contradictions in the national legislation. Provisions of the Convention are not adapted into the national legislation, despite of the fact that Kazakhstan became a party of the Convention in 1994.

4. Nobody was punished, in spite of the paragraph 1, Article 203 of the Criminal Code, which states that intentional destruction of monuments of history can lead to a prosecution of the persons found guilty.

5. Issuance of licenses to private enterprises to conduct surveys and excavations at archaeological monuments lead to partial destruction of the settlement. Their assessment was used as a legal base for illegal construction.

6. The state budget means were used on research of the site, preparation of its nomination into the World Heritage List, and its destruction simultaneously!

7. Damage occurred by the world heritage site was covered by the state budget, and not by the persons who let the destruction of the monument.

8. Persistent neglect of the legislation and international obligations suggests that there was a place for corruption here. This suspicion is supported by the recent corruption scandal which engaged the management of the Republic State Enterprise “Kazakhavtodor.”²²

9. Flagrant disregard of the opinion of the public, Kazakhstan scientists, international experts by the state official and the project developers.

As a result, damage was brought to the economy, rule of law, culture, and international image of Kazakhstan.

The Latest Events and Our Actions

Summing up the visit, the experts set up a goal for the National Commission for UNESCO to prepare propositions before December 20, 2016, on changing the legislation, in order to bring it into compliance with the norms of the World Heritage Convention. A working group was created and the Ecological Society Green Salvation was invited to participate in its work.

Earlier, in October and November 2016, our organization sent comments to the both Chambers of the Parliament on the draft law “About Introduction of Amendments and Additions to Some Legal Acts of the RK Regarding Flora and Fauna” brought for a review by the Majilis of the Parliament. In its comments, the organization indicated that it was necessary to bring the nature protection legislation in compliance with the requirements of international conventions, including the World Heritage Convention.

Participating in the working group, the organization once again prepared propositions on improvement, in the first place, the law “About Specially Protected Natural Territories.” They were sent to the Ministry of Culture, Committee of Forestry and Wildlife, both Chambers of the Parliament.

On December 7, 2016, we received a reply from the Ministry of Agriculture regarding the first set of comments. The reply indicated that the proposition about bringing the legislation in compliance with the requirements of the international conventions is not accepted. The reason: “the current legislation does not contradict to the norms of the international law and ensures their compliance.”²³

The draft law was conceptually approved by the Majilis “in the first reading on December 7, 2016.” A preparation for its review in the second reading began.²⁴

Judging by the report of the Majilis of the Parliament for the second half of 2016, a question about development of legal mechanisms to ensure strict compliance with the Convention on the World Heritage Protection was not raised at all²⁵.

The events unfolded at the Talgar site, clearly demonstrated how far has gone the process of destruction of the governmental apparatus created for protection of monuments of culture and nature.

1 Concept of Cultural Policy of the Republic of Kazakhstan. Adopted by a Decree of the President of the Republic of Kazakhstan dated on November 4, 2014, No.939.

- 2 Same as above.
- 3 State Administration “Department of Passenger Transportation and Autoroads of Almaty District.”
“On the construction (reconstruction) of the autoroad “Birlik-Almalyk-Ryskulov-Kazstroy-Ak-Bulak,” ... 2 242.850 million tenge were spent (including 866.264 million tenge from the state budget, 1 376.586 million tenge from the local budget). Terms of the project realization: 2014-2017. Total cost—3 867.2 million tenge. 2014—641.2 million tenge; 2015—779 million tenge; 2016—2 242.9 million tenge; 2017—909.8 million tenge,” <http://avtozhodary.zhetisu.gov.kz/pages/28/> (last visited January 12, 2017).
- 4 Report on the ICOMOS Advisory Mission to Kazakhstan. The Talgar component (S 01-KZ-01) within the serial World Heritage property Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China, Kazakhstan, Kyrgyzstan) (C 1442). 20 to 28 March 2016, pp.12-13, <http://whc.unesco.org/en/list/1442/documents>.
- 5 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.19.
- 6 State of Conservation Report Republic of Kazakhstan. Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China, Kazakhstan, Kyrgyzstan), No.1442. Almaty, 2015, <http://whc.unesco.org/en/soc/3409>.
- 7 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.23.
- 8 Natalya Dushkina, architect: “If the Public Is Indifferent, Nothing Can be Preserved,” <https://vlast.kz/life/20909-natala-duskina-arhitektor-esli-est-ravnodusie-v-obsestvenicego-sohranit-nevozmozno.html> (last visited November, 2016).
- 9 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.26.
- 10 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.19, pp.26-29.
- 11 Report on the ICOMOS Advisory Mission to Kazakhstan..., p.11.
- 12 World Heritage Convention, <http://whc.unesco.org/en/events/1257>.
- 13 Twelve new members elected to World Heritage Committee Wednesday, 20 November 2013, <http://whc.unesco.org/en/news/1082>.
- 14 Decision: 40 COM 7B.34 Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China / Kazakhstan / Kyrgyzstan) (C 1442), <http://whc.unesco.org/en/decisions/6699> (last visited September 2, 2016).
- 15 Reply of the General Prosecutor’s Office dated on September 13, 2016, to the request of the Ecological Society Green Salvation dated on July 11, 2016.
- 16 Protocol of a field meeting of a State Commission on construction of an autoroad passing through a buffer zone of the “Talgar Site of Ancient Settlement” under a chairmanship of Vice Minister of Culture and Sports of the RK, Mr. G.Akhmedyarov. January 10, 2015.
- 17 Reply of the Directorate of preparation and conducting of the 28th World Winter Student Games 2017 in the city of Almaty date on October 28, 2016 to the request of the Ecological Society Green Salvation dated on October 3, 2016.
- 18 Tasmagambetov Told to Stop Construction on the Territory of Talhiz, <https://www.nur.kz/1298306-tasmagambetov-velel-ostanovit-stro.html> (last visited October 28, 2016).
- 19 Natalya Dushkina...
- 20 Law of the Republic of Kazakhstan dated on July 2, 1992, “About Protection and Utilization of Sites of Historical and Cultural Heritage” (with amendments and additions as of March 29, 2016), Article 13, p.1.
- 21 Decision: 40 COM 7B.34 Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China / Kazakhstan / Kyrgyzstan) (C 1442), <http://whc.unesco.org/en/decisions/6699> (last visited September 2, 2016).
- 22 “Management of “Kazakhavtodor” Was Contained for Giving a Bribe in the Amount of 16 Million Tenge,” <https://www.nur.kz/1352715-rukovodstvo-kazakhavtodora-zaderzha.html> (last visited December 20, 2016).

- 23 Reply of the Ministry of Agriculture dated on December 7, 2016, to the request of the Ecological Society Green Salvation: dated on November 26, 2016.
- 24 Results of the Activity of the Majilis of the Parliament of the Republic of Kazakhstan of the VI Convening in the Second Session (September 1, 2016—December 30, 2016). Majilis of the Parliament of the Republic of Kazakhstan, <http://www.parlam.kz/ru/mazhilis/performance>, p.28 (last visited March 2, 2017).
- 25 Results of the Activity of the Majilis of the Parliament...

CONVENTION ON BIOLOGICAL DIVERSITY. RED BOOK PLANTS ARE UNDER A THREAT OF DESTRUCTION*

Valeriy Krylov,
Forestry specialist,
Almaty, Kazakhstan

Sergey Kuratov,
Ecological Society Green Salvation,
Almaty, Kazakhstan

On August 19, 1994, the Resolution No. 918 of the Cabinet of Ministers of the Republic of Kazakhstan approved the Convention on Biological Diversity (hereinafter—the Convention). Objectives of the Convention “are the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilization of genetic resources.”¹

Development of normative legal acts concerning protection, conservation, and restoration of population and habitat of threatened species of animals and plants began in accordance with the Resolution.

It was planned to take measures to regulate economic activity in the habitats of rare and endangered species of fauna and flora. And also it was planned to implement “in the full extent the procedure for conducting environmental impact assessment of proposed projects that may have a significant adverse effects on biological diversity.”

This timely decision was made due to the fact that the ecological situation in the Republic of Kazakhstan was alarming. The impact on the natural environment of military ranges, the cosmodrome, large mining enterprises, and improper farming practices created a serious threat to the biological diversity of the country.

23 years have passed after the signing of the Convention. The laws “About Specially Protected Natural Territories” of 1997 and 2006, the Forestry Code of 2003, the law “About Protection, Reproduction, and Use of Wildlife” of 2004 were adopted. New specially protected areas, including national parks, appeared on the country map. A number of specially protected natural territories of Kazakhstan have been included in the Tentative List of UNESCO World Heritage sites.² In 1999, the Ministry of Natural Resources and Environmental Protection developed a “National Strategy and Action Plan for Conservation and Balanced Use of Biological Diversity of the Republic of Kazakhstan.”³ In 2008, the state nature reserves Naurzum and Korgalzhyn were included

in the World Heritage List as the “Saryarka—Steppe and Lakes of Northern Kazakhstan” site. In 2007, the Environmental Code was adopted.

However, in 2009, authors of the Fourth National Report on Biological Diversity stated: “The ecological situation in the RK [Republic of Kazakhstan] is characterized to a considerable extent by degradation of natural systems which leads to destabilization of the biosphere, loss of its ability to maintain quality of the environment necessary for vital functions of the society. The problem of desertification is acute. The crisis of biodiversity is caused by business operations, environmental pollution, and natural disasters, as well as insufficient area allocated to protected ecosystems. Depletion of biodiversity and degradation of ecosystem is noted on 66% of the republic’s lands, especially in desert and steppe zones, with plowing and overgrazing.”⁴

The reasons for non-observance of the Convention on Biological Diversity and the mechanism of violation of its norms can be illustrated by an example of the Ile-Alatau State National Natural Park (hereinafter—the Ile-Alatau National Park). The park was founded in 1996 on a territory equal to 164450 hectares “in order to preserve and restore the unique natural complexes of the Zailiysky Alatau, which have a special ecological, historical, scientific, aesthetic and recreational value.”⁵ Already in 2002, it was included in the Tentative List of UNESCO World Heritage sites.

Theoretically, great opportunities opened up for the national park, but being next to the Almaty urban agglomeration became a serious obstacle. The city authorities could not look indifferently at the vast unoccupied territories, which had a great recreational potential. This was a starting point for initiatives of the local authorities that led to gross violations of the Convention.

On March 27, 2007, development of a project of a resort and mountain-skiing base “Kokzhailau” on the territory of the Ile-Alatau National Park was initiated by an order of the akim of Almaty.⁶ The city authorities were not troubled by the fact that the national park is a specially protected territory of the countrywide level. At that time, the park was under control of the Ministry of Agriculture. Consequently, they had no right to engage in any activity on its territory. The construction was planned to be carried out in a zone of rich biological diversity. They decided to start by building an autoroad to the future resort.

When the Ecological Society Green Salvation (hereinafter—ES) found out about such plans of the akimat, the organization requested detailed information of the proposed activity. The akimat did not respond to either the first or the second request. In this regard, on October 22, 2007, the ES filed a lawsuit to the Specialized Inter-Regional Economic Court of the city of Almaty with a demand to oblige the akimat to provide the requested environmental information. Meanwhile, construction of the road in the park continued.

On November 14, 2007, the court ruled in absentia that the claim was satisfied, but the akimat did not provide the information on the planned

activity. In March 2008, the ES received a reply from the Forestry and Hunting Committee regarding construction of the road, which said that “the existing road to the Kokzhailau landmark was undergoing repairs for fire control and forestry purposes.”⁷

A serious obstacle to the construction in 2007, apparently, was a ban on transferring lands of specially protected natural territories into other categories of lands, as stipulated in the law “About Specially Protected Natural Territories.” The Article 23 stated:

“1. Lands of specially protected natural territories, as well as land plots of other categories of lands occupied by objects of the state natural reserve fund, are in the state ownership and are not subject to privatization.

2. Withdrawal of lands of specially protected natural territories, as well as their transfer to lands of other categories is not allowed.”⁸

Little by little, talks about construction of the ski resort “Kokzhailau” quieted down, but the city authorities did not abandon their plans. Since the beginning of 2008, they started to look for funds to develop design estimates.⁹ In the same year, the ban on transferring lands of specially protected natural territories into other categories was cancelled. Now, the Article 23 looked like this:

“1. Lands of specially protected natural territories, as well as land plots of other categories of lands occupied by objects of the state natural reserve fund, are in the state ownership and are not subject to alienation (отчуждение).

2. Withdrawal of lands of specially protected natural territories is not allowed.

The transfer of lands of specially protected natural territories is not allowed, except for cases of transfer into lands of reserve for construction and operation of tourism facilities planned by state programs, in the absence of other options for their possible placement and only those areas where procedures of limited economic activity are established, with an approval of the state environmental assessment, in the order established by the Government of the Republic of Kazakhstan.”¹⁰

Despite the fact that the content of the second part of the second paragraph completely contradicts the paragraph 1 and the first sentence of the second paragraph, the parliamentarians adopted the addition to the law. A loophole to manipulate lands of national parks was created.¹¹ None of the legislators even thought about that the territories which now can be transferred to the category of “lands of reserve,” could have been the habitats of the Red Book species of plants and animals.

In summer of 2011, officials started talking about the project again. At a governmental meeting, the akim of Almaty said “that it is planned to develop the ski resort “Kokzhailau” in Almaty.” According to him, development of feasibility studies and the project concept will require about 3 billion tenge.¹² As it was to be expected, at the very first public hearings about the mountain ski resort project,

a question came up: “Are there any Red Book species on the territory of the proposed construction?” Evasive responses of officials and project developers confirmed the concerns of environmentalists. The public started a campaign against construction of the resort. As it turned out, no systematic studies were conducted on the territory of the proposed mountain ski complex.

When the design and estimate documentation for construction of the autoroad to the resort became publicly available, the threat of destruction of the Red Book plants became obvious.

As in 2007, the initiator of the project, Almaty Administration of Autoroads, and the developer were not troubled by the fact that they plan the construction development on a territory of a national park which is in the republic’s subordination. Specialists traced the route of the future road on a grand scale, straightening it out or expanding where they deemed to be necessary. As for the plants growing along the road, there was no doubt they were to be cut or transplanted. Thus, 1967 transplantable trees were under threat. 1361 Tien-Shan spruce trees, 3283 deciduous trees, including 465 Sivers apple trees (*Málus sievérsii*), 12 coniferous shrubs, and 15855 shrubs were non-transplantable. All were in good and satisfactory condition. Additionally, 71 Sivers apple trees found in unsatisfactory conditions were subject to sanitary cutting.¹³

To prevent destruction of the rare plants, the Ecological Society Green Salvation filed a lawsuit to the Specialized Inter-Regional Economic Court of Almaty on April 17, 2015. The lawsuit was about acknowledging of the environmental impact assessment (hereinafter—EIA) of the project of construction of the road to the resort to be illegal and about its abolition.

Authors of the EIA mentioned the Sivers apple tree, but did not indicate that it is the Red Book plant. It is registered under No.114 in the “List of Rare and Endangered Species of Plants and Animal” approved by a decree of the government.¹⁴ Sivers apple tree is also included in the Red List of Endangered Species of the International Union for Conservation of Nature (hereinafter—IUCN).

Common apricot (*Armeniaca vulgaris*) is also mentioned in the EIA, but the authors did not indicate that it is registered in the “List ...” under No.117, and is also included in the IUCN Red List. The EIA does not specify how many apricot trees the project developers were planning to cut down. The EIA mentions nothing about herbaceous plants listed in the Red Book and present on the territory of the proposed construction.

In recent years, the number of Red Book plants in Kazakhstan is rapidly decreasing. In particular according to the IUCN data, natural habitats of Sivers apple tree decreased by 70% in the last 30 years.¹⁵ The main reasons for reduction in the number of common apricot trees are “construction and development of tourist resorts, cutting down for firewood, harvesting fruits.”¹⁶

The developers were not troubled by the fact that, in accordance with the

national legislation and the Convention on Biological Diversity, not only the threatened species are subject to protection, but also their habitats. The developers did not take into account that in accordance with the Article 339 of the Criminal Code,¹⁷ the following is considered to be a criminal offense: “Illegal collection, acquisition, storage, sale, import, export, shipping, transportation, or destruction of rare and endangered species of plants or animals, their parts or derivatives, ... as well as the destruction of their habitats.”

When reviewing this case, courts of all instances ignored the following rules of national and international law.

Competence of the government in the area of utilization and protection of the Red Book plants was interpreted by the courts in a rather strange manner.

Representatives of the defendant repeatedly claimed in court that the government can make decisions on cutting of Red Book plants. This statement does not correspond to the norms of the Forestry Code and the law “About Specially Protected Natural Territories.”

In accordance with the Article 12 of the Forestry Code:

“The Government of the Republic of Kazakhstan:

1) develops the main guidelines and ensures implementation of the state forest policy;

2) exercise the rights of ownership, use, and managing the state forest fund;

...

10) approves volumes of withdrawal (изъятие) of plants listed in the Red Book of the Republic of Kazakhstan.”¹⁸

According to the paragraph 18-15) of the Article 13 of the Code, the authorized body and its territorial subdivisions make “proposals to the Government of the Republic of Kazakhstan on the volume of withdrawal of plants listed in the Red Book of the Republic of Kazakhstan.”

In accordance with the Article 7 of the law “About Specially Protected Natural Territories,” the competence of the government includes:

“2) the right to own, use, and manage specially protected natural territories and objects of the state natural reserve fund of national importance; ...

3-1) making decisions about withdrawal of rare and endangered plant species;

4) approval of:

... a list of rare and endangered species of plants and animals.”

Paragraph 5 of the Article 32-1 of the law “About Specially Protected Natural Territories” provides an exhaustive list of cases in which rare plant species can be withdrawn from their natural habitat. “Withdrawal of rare and endangered plant species is carried out on the basis of a decision of the Government of the Republic of Kazakhstan for:

1 - reproduction in specially created conditions;

2 - scientific research;

3 - selection.”

In other words, not a single state body of the Republic of Kazakhstan has a right to issue permits to cut Red Book plants. The government has the authority to withdrawal species from their habitat which is not an eradication or cutting.

A representative of the Ile-Alatau National Park stated in a court that for the entire period of the park’s existence, the government has never adopted an order for withdrawal of any Red Book plants on its territory. In addition, there is no information in the official “Adilet” database that such a decision was ever made for any other national park of Kazakhstan.

The courts did not take into account that the EIA developers did not comply with a number of environmental requirements contained in laws, standards, norms, and regulations of the Republic of Kazakhstan. But at the same time, during preparation of the EIA, they used legal documents which are not related to protection of Red Book plants. Firstly, they referred to the “Rules of Maintenance and Protection of Green Vegetation in the City of Almaty” (hereinafter—the Rules). But according to the paragraph 55 of the Rules, their effect “does not extend ... to specially protected natural territories of the countrywide level,” which is the Ile-Alatau National Park. Secondly, the materials of the plants inventory and forest pathological survey that were used in the development of the EIA were carried out neither in accordance with the law “About Specially Protected Natural Territories,” nor with the Forestry Code, nor with the Sanitary Rules in the Forests.¹⁹ The author of the materials acted in accordance with the “Instruction on the Procedure for Conducting and Preparing of Inventory Materials and Forest Pathological Survey of Green Vegetations of the City of Almaty” of 2006. But as explained by the Ministry of Justice in a letter dated on July 1, 2015, this instruction was found neither “in the informational and legal system “Adilet,” nor in the State Register of Normative Legal Acts of the Republic of Kazakhstan. Therefore, this document has no legal force, in accordance with the Part 1 of the Article 38 of the Law of the Republic of Kazakhstan “On Normative Legal Acts.” The judges paid no attention to the fact that the defendants used inactive and unrelated legal acts.

The judges ignored the fact that during the court hearings, representatives of the defendant used concepts that did not apply to the legislation regulating the use and protection of the Red Book plants. In the Forestry Code and the law “About Specially Protected Natural Territories” there are no concepts of “cutting” or “pulling down” of the Red Book plants.²⁰ Moreover, paragraph 5 of the Article 42 of the Forestry Code states: “Collection and harvesting of wild plant and fungi species listed in the Red Book of the Republic of Kazakhstan ... are prohibited.”

The fact that the EIA developers did not even mention about requirements of international environmental conventions was not taken into account.

According to the paragraph 3, Article 4 of the Constitution: “International treaties ratified by the Republic have a priority over its laws and are applied directly.”

Paragraph 3 of the Article 1 of the Forestry Code states: “If an international agreement ratified by the Republic of Kazakhstan establishes rules that differ from those contained in this Code, then the rules of the international agreement are applied.”

According to the paragraph 4 of the Article 2 of the law “About Specially Protected Natural Territories”: “If an international agreement ratified by the Republic of Kazakhstan establishes rules that are different from those contained in this Law, then the rules of the international agreement are applied.”

According to the Article 8 of the Convention on Biological Diversity: “Each Contracting Party shall, as far as possible and as appropriate:

(a) Establish a system of protected areas or areas where special measures need to be taken to conserve biological diversity; ...

(d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings; ...

(f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies.”

The Fourth National Report of the Republic of Kazakhstan on Biological Diversity, in particular, notes the following.

“Worldwide recognition was received by the orchard ABD [agro-biodiversity] and, above all, by the wild apple and common apricot.”²¹

Authors of the report believe that it is necessary to take measures “on assessing the condition and inventory of biodiversity objects, expanding the network of specially protected natural territories, and preserving the natural populations of rare species.” Inclusion of reserves and national parks into the UNESCO World Heritage List will also contribute to conservation of biodiversity.

“Many communities have very narrow ranges and for this reason accidental death can lead to their loss in nature. Preservation of these rare and endangered species can only be achieved through enhanced protection of their communities.”

“Reluctance of some governmental officials to carry out their duties on implementation of the CBD [Convention on Biological Diversity] influences decision-making in specific cases. It leads to loss of trust in state bodies by executive organs and consumers of natural resources. ...

Corruption among officials. A nationwide problem that leads to loss of trust in the state, and not only in this area. It causes slowdown in the processes of implementation of protection, restoration, and utilization of biological diversity.”²²

In the opinion of the authors of the Fifth National Report of the Republic of Kazakhstan on Biological Diversity, withdrawal of lands of specially protected natural territories for construction of tourism facilities represents

a serious threat to rare species habitats. “Thus, the imperfection of the legislative base allows practically any site necessary for privatization to be withdrawn in the similar manner from any national park.”²³

But these arguments, which were presented by the ES in the court, also did not have any effect.

Finally, the judges did not react in any way to the inaccurate information provided by the defendant-developer of the EIA. For example, in the section 10 of the EIA “Impact on the Objects of the Nature Reserve Fund,” it is not indicated at all that the construction of the road will affect the state natural reserve fund.

In the section 12 of the EIA “Assessment of Environmental Risks,” the paragraph 6 states that the construction of the road “has a positive social and economic value, since it positively affects the transportational, natural, social” ... situation in the city. The defendant does not mention the fact that according to the paragraph 6 of the Article 108 of the Land Code, “inclusion of land plots into city, town, or village limits does not entail termination of the right of ownership or the right of land use over these plots.” The defendant does not need extra mentioning that the national park does not obey the city authorities, and that the EIA is not agreed with the Ministry of Agriculture.

On the page 50 of the EIA, it suddenly turns out that “the removal (снос) of the plants” will be carried out “in accordance with the established permits for cutting down trees issued by the Department of Natural Resources and Environmental Management of the city of Almaty.” Again, the authors of the EIA chose not to say that they were going to remove Red Book plants on the territory of a national park. As noted above, no governmental agency has such powers in accordance with the law.

Paragraph 7 of the Section 12 of the EIA sounds like a cynical mockery of the national legislation and the international obligations of the Republic of Kazakhstan: “An integrated assessment ... showed that this impact [construction of a road in a national park and cutting down Red Book plants—author’s note] is not catastrophic.”

Courts of all instances rejected the claims of the Ecological Society Green Salvation. Prosecutors who attended the hearings also “did not notice” any violations. Our letters to the Prosecutor’s Office and the Ministry of Internal Affairs about the preparation of a criminal offense were left unanswered.

The Supreme Court’s regulatory resolution No.1 of January 15, 2016, states: “By implementing the indicated constitutional powers, the Supreme Court ensures a uniform interpretation and application of the law in the implementation of legal proceedings.”

In the paragraph 10 of the Supreme Court’s regulatory resolution No.1 of July 10, 2008, “On Application of the Norms of International Agreements of the Republic of Kazakhstan,” it is stated: “In the administration of justice, courts

should bear in mind that ... improper application of the norms of international agreements of the Republic of Kazakhstan by a court may constitute grounds for cancellation or change of a judicial act. Incorrect application of a norm of an international agreement can be concluded in the fact that the courts did not apply the norms of international agreements to be applied, or applied the norms of international agreements that are not applicable, or when the courts have misinterpreted the norms of international agreements.”

However, the practice of applying the conventions in the country demonstrates a huge gap between the declared observance of their requirements and the real state of affairs. A striking confirmation of this fact is that even the judges of the Supreme Court often ignore international conventions and regulatory resolutions of the Supreme Court when considering cases. This leads to adoption of absurd judicial acts, undermining the authority of judges, creating doubts about their competence.

The regulatory resolutions No.1 of July 10, 2008, and No.8 of November 25, 2016, “On Certain Aspects of Application of the Environmental Legislation of the Republic of Kazakhstan in Civil Cases by the Courts,” explains application of the norms of the Aarhus Convention by the courts.²⁴ But they do not mention application of the provisions of the following environmental conventions ratified by the Republic of Kazakhstan:

- on protection of the world cultural and natural heritage,
- on wetlands of international importance,
- on biological diversity.

Many norms of the conventions are not adapted to national legislation and are not applied by courts. This violates the legal status of the international agreements, which, according to the Constitution, take precedence over national laws and are applied directly.

The above described example demonstrates that no governmental body “wished” to stand up for protection of the Red Book plants and specially protected natural territory. The officials demonstrated their inability to comply with the international obligations adopted by the Republic of Kazakhstan in accordance with the Convention on Biological Diversity.

* The cited articles of the laws are set out in the editions that were in effect at the time of filing the lawsuit on April 17, 2015.

1 Convention on Biological Diversity, <https://www.cbd.int/>.

2 World Heritage Convention, <http://whc.unesco.org/en/tentativelists/1681>.

3 Fourth National Report of the Republic of Kazakhstan on Biological Diversity. Ministry of Environmental Protection. —Astana, 2009, p.33, <https://www.cbd.int/doc/world/kz/kz-nr-04-en.pdf>.

National Strategy and Action Plan for Conservation and Balanced Use of Biological Diversity of the Republic of Kazakhstan were not approved by the government.

- “Within the Project of GEF/UNDP/MEPWR of the RK “Planning of Conservation of Biological Diversity at the National Level to Support Implementation of the Strategic Plan of the CBD in the Republic of Kazakhstan for 2011-2020” in order to meet the obligations of Kazakhstan in front of the CBD and according to the Action Plan for implementation of the Concept of Transition of the Republic of Kazakhstan to “the Green Economy,” the draft of the Concept on Conservation and Sustainable Utilization of Biological Diversity in the Republic of Kazakhstan till 2030 was developed.—Astana, 2015, GEF—UNDP, pp.12-13, 21, <http://www.fhc.kz/conventions/files/kz-nbsap-rus.pdf>.
- 4 Fourth National Report of the Republic of Kazakhstan on Biological Diversity, p.4, <https://www.cbd.int/doc/world/kz/kz-nr-04-en.pdf>.
 - 5 Resolution of the Government of the Republic of Kazakhstan dated on February 22, 1996, No.228 “On Foundation of the Ile-Alatau State National Natural Park in the Almaty Oblast.”
 - 6 The order of the akim of the city of Almaty dated on March 27, 2007, No.106-r “On Creation of a Working Group for Development of Proposals for Construction of a Resort and Mountain-skiing Base ‘Kokzhailau’.”
 - 7 Reply of the Forestry and Hunting Committee dated on March 14, 2008, No.25-11-23/800 to the request of the Ecological Society Green Salvation.
 - 8 Law “About Specially Protected Natural Territories” dated on July 7, 2006 (first edition), Article 23.
 - 9 Reply of the Department of Passenger Transport and Autoroads of the City of Almaty dated on February 18, 2008, No.468, to the request of the Ecological Society Green Salvation.
“In accordance with the Action Plan for 2007-2009 for implementation of the State Program of Tourism Development in the Republic of Kazakhstan for 2007-2011 adopted by the Decree of the Government of the Republic of Kazakhstan dated on February 28, 2007, No.156,... works on implementation of investment projects are carried out for construction of ... mountain ski resorts in Almaty oblast, according to the master plans of development of tourism infrastructure... in the Ile-Alatau SNNP.” Fourth National Report of the Republic of Kazakhstan on Biological Diversity, p.60, <https://www.cbd.int/doc/world/kz/kz-nr-04-en.pdf>.
 - 10 Law “About Specially Protected Natural Territories” (with changes and amendments as of March 1, 2011), http://online.zakon.kz/Document/?doc_id=31039993#pos=345;-156.
 - 11 Moreover, the authors of the “National Report on the Condition of the Environment and Use of Natural Resources in 2015” do not see anything negative in giving out lands of national parks for lease. “Work on leasing out lands of specially protected natural territories for long-term and short-term use which started in Kazakhstan back in 2007 continues.
In accordance with master plans of environmental protection institutions infrastructure development, 257 land plots with a total area of 9713.26 hectares were leased out for a long-term use, and 135 land plots with a total area of 248.68 hectares were lease out for a short-term use.
Sites for construction of tourism facilities are located only in the areas zoned for tourist, recreational, and limited economic activities and are provided for a long-term and short-term use.” “National Report on the Condition of the Environment and Use of Natural Resources in 2015,” p.47, <http://energo.gov.kz/index.php?id=8340> (last visited June 7, 2017).
 - 12 “Mountain Ski Resort ‘Kokzhailau’ Is Planned to Be Developed in Almaty,” http://www.kt.kz/rus/society/v_almati_planiruetsja_razvivatj_gornolizhnij_kurort_kok_zhajljau_1153540166.html (last visited on May 12, 2017).
 - 13 Environmental Impact Assessment of the Project “Construction of an Autoroad to the Mountain Ski Resort ‘Kokzhailau’.”—Almaty, 2014, p.50. Initiator of the EIA is the Department of Autoroads of the City of Almaty.
 - 14 “List of Rare and Threatened Species of Plants and Animals.” Adopted by the Decree of the Government of the Republic of Kazakhstan dated on October 31, 2006, No.1034 with the amendments of November 7, 2012.
 - 15 Sivers apple tree. “Faces a number of threats including loss and degradation of habitat due to

- agricultural expansion and development, genetic erosion (grafting of commercial varieties and hybridization) and overgrazing. In Kazakhstan its habitat has declined by over 70% in the last 30 years. Overall, it is suspected that population declines throughout its range have exceeded 30% over the last three generations,” <http://www.iucnredlist.org/details/32363/0>.
- 16 Common apricot. “Threats to the species, the origin of all cultivated apricots, include construction, development of tourism resorts, cutting for fuel wood, harvesting of fruit and the collection of germplasm by both national and international plant breeding companies,” <http://www.iucnredlist.org/details/summary/63405/0>.
 - 17 Criminal Code (with amendments as of August 2, 2015).
 - 18 According to the paragraph 1, Article 32-1 of the law “About Specially Protected Natural Territories”: “The Red Book of the Republic of Kazakhstan is an illustrated edition of the list of rare and endangered plant and animal species containing a collection of information on the status of rare and endangered species of plants and animals on the territory of the Republic of Kazakhstan, the necessary measures for their study, protection, reproduction and sustainable use.”
 - 19 Sanitary Rules in Forests. Adopted by a Decree of the Minister of Agriculture of the Republic of Kazakhstan dated on November 17, 2015, No.18-02/1003.
 - 20 Concept of “necessary removal (чоч) of plants” was taken from the Rules..., paragraph 3, subparagraph 2.
 - 21 Fourth National Report of the Republic of Kazakhstan on Biological Diversity, p.3, <https://www.cbd.int/doc/world/kz/kz-nr-04-en.pdf>.
 - 22 Same as above, p.28, p.39.
 - 23 Fifth National Report of the Republic of Kazakhstan on Biological Diversity. Ministry of Environment and Water Resources.—Astana, 2014, pp.96-97, <https://www.cbd.int/doc/world/kz/kz-nr-05-en.pdf>. Sixth National Report on Compliance with the Convention on Biological Diversity shall be prepared by December 31, 2018 (COP 13, decision XIII/27), <https://www.cbd.int/doc/decisions/cop-13/cop-13-dec-27-en.pdf>.
 - 24 Supreme Court, <http://sud.gov.kz/rus/legislation/CAT01/79693/2016>.

PART II

LEGAL SITUATION IN THE REPUBLIC OF KAZAKHSTAN



ACCESS TO JUSTICE IN ENVIRONMENTAL MATTERS.

**Based on the materials of the judicial practice of the
Ecological Society Green Salvation
in 2014—beginning of 2017**

Svetlana Katorcha, lawyer,
Sergey Kuratov,
Nataliya Medvedeva,
Alma Omarbekova, lawyer,
Ecological Society Green Salvation,
Almaty, Kazakhstan

Access to justice is one of the main legal principles allowing every person to protect their right on the environment favourable for health and wellbeing. Without the opportunity to be defended, the rights cannot be implemented and are only left on paper.

1. Legal Violations Disputed in Courts

In its practice, Ecological Society Green Salvation (hereafter—ES) constantly faces a slighting attitude of the state authorities and business towards the “public interests.”¹ Even the official mass media informs about numerous violations of the human rights on the environment favourable for health and wellbeing. National and international official reports, presentations, and researches confirm the seriousness of the situation.

For the three years that passed after the Fifth Meeting of the Parties of the Convention on Access to Information, Public Participation in Decision-making, and Access to Justice in Environmental Matters (hereafter—the Aarhus Convention), the organization disputed in courts the following violations of the law:

- non-observance of the provisions about protection of rare and threatened species of plants;
- failure of the local executive authorities to establish protection zones along the borders of specially protected natural territories;
- failure of the Ministry of Culture and Sports to provide control over utilization and protection of sites of historical and cultural heritage, including the UNESCO World Heritage site;
- conducting the state environmental assessments with violations of the legislative requirements;

- inaction of the state authority in liquidation of illegal dump sites;
- application of inactive normative legal acts as a legal base for preparation of Environmental Impact Assessment (hereafter—EIA);
- violation of the public right to receive timely, full and reliable environmental information from the state organs;
- ungrounded refusals of state organs over requests to provide open information about sanitary and protection zones of polluting enterprises.

In our opinion, the main violators remain to be the state organs² responsible for decision-making, conducting of environmental assessments, issuing permits, licenses, control over compliance of laws, distribution of information, and suppression of legal violations by pre-judicial and judicial methods. Of course, the fact that the lower level officials are under pressure of the higher level leadership and large business cannot be discounted. Corruption paralyzed practically the whole state apparatus which is rapidly losing its ability to manage the country effectively.³

The most noticeable change that happened during the last period is the character of the legal violations. They became far more evident and severe. There is an impression that many officials and businessmen came to completely believe in powerlessness of the law and their own impunity. Using the growing legal chaos, the violators file lawsuits against citizens who are protecting their interests.

2. Filing Statements

Process of addressing a court starts with filing of a statement, and already at this stage, the organs of justice create obstacles without despising violations of the law. Language of the denials and reasons for returning the statements noticeably changed. If earlier, the public right to address the court was often disputed itself, and bureaucratic delays always occurred because of determination of the jurisdiction, in 2015-2016, other procedural impediments started to appear more often.

In 2015-2016, 9 statements filed by the ES were not accepted from the first time. Some of the statements had to be re-filed two or three times. The main reasons for the returns and denials were:

- unpaid state fee, even though in all cases, the ES addressed the court in defence of rights, freedoms, and lawful interests of local residents, undefined number of people, and the state. In order to accelerate the process for accepting the documents, the ES had to pay the state fee (4 statements);⁴
- case is not subjected to be reviewed and resolved in the order of a civil proceeding; in violation of the paragraph 4 of the Article 151 of the Civil Procedural Code (hereafter—CPC), the court did not indicate which organ the ES need to address to in the given case (2 statements);
- disputed material “does not cause legal consequences for the claimant” (1 statement).

Violated: paragraphs 2 and 3 of the Article 9 of the Aarhus Convention; paragraph 2 of the Article 8 of the Civil Procedural Code; subparagraph 1-1) of the paragraph 1 of the Article 14 of the Environmental Code; paragraph 10) of the Article 541 of the Code of the Republic of Kazakhstan “About Taxes and Other Obligatory Payments to the Budget.”

In 2015-2016, as a result of illegal actions of the courts of the first instance, the ES had to address Almaty City Court three times with private complaints. As a result, majority of the ES statements were accepted, but the process of filing a statement took several months, instead of five days stipulated by the paragraph 1 of the Article 150 of the CPC.

3. Statements Reviewing Process

During statements reviewing process, the organization faces numerous violations of the norms of material and procedural law on the part of the judges. Defendants from the state organs often treat the claimants and the court disrespectfully. Non-appearance to a court without a justified reason is a common practice which drags the process and creates obstacles for the work of the organization.

During reviewing of the statements, impartiality of the judges is often doubted. Some of them instead of a uniform application of the laws call upon patriotic feelings of the claimants and give unprofessional subjective evaluation to the actions of the ES. For example, in 2016, during review of one of the cases, the ES submitted a statement about recusation of the judge. The chairman of the court did not satisfy the statement, but the judge withdrew himself. The thing is that earlier, he violated the norms of the material and procedural law twice, and did not accept the statement of the organization to be reviewed. The Almaty City Court admitted the violations and cancelled both of his determinations.

Paragraph 2 of the Article 54 of the CPC requires obligatory participation of a prosecutor in civil proceedings for cases related to the state and public interests.⁵ But prosecutors often are not present at the hearings. Their opinions are not always announced before a decision is taken. Generally, prosecutors do not conduct a “control over observance of rights and freedoms of a human and citizen, lawful interests of juridical persons and the state,”⁶ and uniform application of laws. Often, they take the side of the violators. In the ES’s experience for the past two years, there was not a single case when a prosecutor supported demands in defence of interests of undefined number of people or the state.

According to the paragraphs 1 and 2, Article 1 of the CPC, the order of civil proceedings is defined not only by the national legislation, but also by the norms of the international law. International treaties and other obligations of Kazakhstan, regulatory resolutions of the Supreme Court “are components of the civil procedural law.”

Practice shows that when reviewing a case, judges do not study statements of the ES about ignoring of the norms of international treaties by the state organs

violating paragraphs 1 and 2 of the Article 1, paragraph 1 of the Article 6 of the CPC. Unqualified prosecution of processes by judges is one of the reasons why unlawful decisions are made.

Review process of some cases is dragged on for years.

4. Analysis of Court Decisions and Appeal Instance Rulings

Out of 7 lawsuits of the ES which were accepted and reviewed in 2016, courts denied satisfying demands in 6 cases. On January 25, 2017, a petition of the ES on one of the cases was satisfied by the Supreme Court Judicial Board and forwarded to the court of the first instance for a review starting from the stage of the case acceptance. The main reasons for denials are: ignoring of requirement of international nature protection conventions, interpretation of laws by courts at their own will, application of inactive normative legal acts, bad knowledge of materials on the cases, going outside the scope of lawsuits demands.

4.1. Courts of the First Instance Do Not Apply the Norms of the International Nature Protection Treaties

Courts do not take into consideration the international nature protection treaties, despite of the fact that practically in all lawsuits, the organization references provisions of the conventions ratified by the Republic of Kazakhstan. Courts of the first instance ignore the norms of the paragraph 3 of the Article 4 of the Constitution, paragraph 3 of the Article 2 of the CPC, paragraph 2 of the Article 2 of the Environmental Code, paragraph 3 of the Article 1 of the Forestry Code, paragraph 4 of Article 2 of the law “About Specially Protected Natural Territories,” and other normative legal acts. In all of them, it is stated that ratified international treaties have a priority over the laws of Kazakhstan. For the past three years, courts of the first instance and equalled to them courts haven’t applied the norms of the international conventions at all during making their decisions on the ES’s lawsuits.

On March 11, 2016, the Specialized Inter-Regional Economic Court of the City of Almaty (hereafter—SIEC) denied the ES in satisfying lawsuit demands. Documents presented to the court proving the arguments about banning of clear-cutting and sanitary cutting of plants listed in the Red Book of Kazakhstan were not studied by the court and were not given an appropriate evaluation.

The court did not take into consideration the norms of the Convention on Biological Diversity. Its decision doesn’t even mention that Kazakhstan undertook international obligations in preservation of biological diversity including protection of the plants listed in the Red Book, in accordance with the Convention. The judge ignored the fact that according to the law, not only the plants, but also the territory where they are growing must be protected.⁷ During review of this case, the court violated the principle of the course of law.

According to the paragraph 1 of the Article 6 of the CPC: “During reviewing and resolving of civil cases, a court must accurately follow the requirements of the Constitution of the Republic of Kazakhstan, constitutional laws of the Republic of Kazakhstan, the present Code, other regulations, applicable international agreements of the Republic of Kazakhstan.”

The judge also violated the regulatory resolution of the Supreme Court “About Application of the Norms of the International Agreements of the Republic of Kazakhstan” which indicates that “...incorrect application of the norms of international agreements of the Republic of Kazakhstan by a court can be a basis for cancellation or alteration of a judicial act. Incorrect application of a norm of an international agreement can be expressed in courts’ failure to apply norms of applicable international agreements, or in application of norms of inapplicable international agreements, or incorrect interpretation of norms of international agreements.”⁸

On November 6, 2015, the SIEC of the city of Almaty denied the ES in satisfying the demands about acknowledging the conclusion of the State Environmental Assessment on the materials of the EIA for the project of construction of an autoroad to the mountain ski resort “Kokzhailau” to be illegal.⁹ The court did not base its decision neither on the paragraph 1 of the Article 58 of the Environmental Code (hereafter—EC), nor on the paragraphs 2 and 3 of the Article 9 of the Aarhus Convention.

To put it mildly, this is surprising, since in the regulatory resolution of the Supreme Court dated on November 25, 2016, it is clearly stated: “Disagreements in implementation of the SEA [State Environmental Assessment] are reviewed by negotiations or in court (Article 58 of the EC). When reviewing such cases, courts must follow the environmental legislation, provisions of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters.”¹⁰

In 2016, similar violations were committed by the courts of the first instance when reviewing all lawsuits of the ES.

4.2. Judges Interpret the Legislation at Their Own Will

Random interpretation and application of a law during implementation of a legal proceeding became a widely used practice and one of the main reasons for making unlawful decisions. Such decisions were repeatedly made by the courts on the ES’s lawsuits.

For example, during reviewing of the above mentioned case about construction of an autoroad to the mountain ski resort “Kokzhailau,”¹¹ the judge decided that the lands of a specially protected natural territory of the state-wide level fall under the “Rules of Maintenance and Protection of Vegetation of the City of Almaty.” He “based” his decision on the fact that

part of the national park is within the administrative borders of the city.¹² The judge of the Appellate Board of the Almaty City Court came to the same conclusion.¹³ The courts interpreted at their own will the paragraph 55 of the indicated Rules, which states that the Rules do not apply to specially protected natural territories of the state-wide level. Besides, the judge allowed a random interpretation of the paragraph 6 of the Article 108 of the Land Code. The latter states that “inclusion of land plots into limits of a city, town, or village, does not terminate property right or right of land use over these plots.” None of the judges was troubled by the fact that the city authorities do not have a right to interfere into the activity of a specially protected natural territory of the state-wide level.

During reviewing of the case about acknowledging to be illegal of the EIA for the project of construction of an autoroad to the mountain ski resort “Kokzhailau,”¹⁴ the judge denied to satisfy the lawsuit demands. Firstly, he referred to a similar case which supposedly has been reviewed earlier.¹⁵ By making such a conclusion, the judge severely violated the requirements of the paragraph 4 of the Article 15 of the CPC, which states: “While staying unbiased and impartial, a court conducts the process, creates necessary conditions for realization of the parties’ procedural rights on full and objective study of circumstances of a given case.” Thus, the judge interpreted at his own will the purposes of the two different documents—the EIA and the conclusion of the state environmental assessment.

Secondly, he did not study the proofs presented by the claimants referring to the conclusions of the state environmental assessment performed with severe violations of the legislation. In other words, the EIA is conducted correctly because it is confirmed by the state assessment, and the state assessment is correct because it is confirmed by the court!

Thirdly, in a very contradictory form, however, the judge made an attempt to explain that “the EIA stipulates measures for minimization of negative consequences of the project realization!” In other words, he admitted its negative consequences.

Fourthly, the question about the fact that the experts approved clear-cutting of the plants listed in the Red Book was left without consideration. During the court hearings, the defendants could not explain which law allows their cutting.

4.3. Application of Inactive Regulatory Acts, Poor Study of Cases

Careless review of statements from the public and poor study of case materials became a common practice in courts. On the other hand, the courts are very uncritical towards the proofs presented by state officials which allow the latter to intentionally mislead the courts.

For example, the organization addressed a court with a statement about acknowledging the materials of inventory and forest pathology examination of

vegetation prepared with violation of the legislation to be illegal.¹⁶ When the defendants worked on these materials, they used a regulatory act which did not have a juridical force in the territory of the national park, and guideline which was not a regulatory act of the Republic of Kazakhstan. This document was used in two other cases which were reviewed on the statements of the ES.¹⁷ But neither the judges, not prosecutors did not express any objection against these so called “legal bases.”

Another example demonstrates how the courts at all costs “cover” the state organs even when irrefutable proofs are presented. A court was reviewing a lawsuit of the ES about providing of unreliable information about construction of cable road on the territory of a national park by the Forestry and Wildlife Committee. In violation of the Article 65 and part 2 of the Article 218 of the CPC, the judge did not consider the proofs referred to by the ES. He based his denial on expired documents of 1994, which became inactive more than 20 years ago, due to foundation of Ile-Alatau National Park (Decree of the Government dated on February 22, 1996, No.228). As a result, the Committee still did not provide reliable information. An absurd situation occurred. Territory where the illegal construction took place, in the court’s opinion, was not included into the park. While according to the Decree of the Government, land acts and maps, it is territory of the national park. Moreover, this is a reserved zone. Who if not the proprietor of the constructed facility is benefiting from such a position of the court?

Appellate Board of the Astana City Court also expressed a slighting attitude towards the arguments of the ES. Additional proofs provided by the organization were not taken into consideration.¹⁸

A few words shall be mentioned about incorrect preparation of the documentation of the court decisions as well.

On December 21, 2015, a judge admitted inaction of an official (mayor) who for several years did not take measures on liquidation of an illegal dumpsite on an abandoned land plot.¹⁹ But in violation of the paragraph 1 of the Article 227 of the CPC, the judge:

- did not indicate in the decision “which laws do these actions (inactions) contradict, and the deadline for implementation of the court’s decision”;
- did not oblige “the authority and governmental official to liquidate in full extent the allowed violation and recover the violated rights, freedoms, and lawful interests of a citizen.”

In this regard, the ES filed an appeal demanding to oblige the akim to restore the order.

Referring to the untruthful information provided by the akim who stated that the demands of the residents in liquidation of the dumpsite were met in the full extent, the judges of the Appellate Board made a decision about denial of the complaint.

As a result, the local executive organs still did not liquidate the dumpsite.

5. Reviewing Cases in the Supreme Court

The same violations as in the courts of the lower instances are practically taking place in the Supreme Court. Judges not always study thoroughly cases materials. Often, they blindly copy the decisions of the courts of the first instance. This leads to absurd situations which diminish their authority and create doubts in their competence.

For example, on June 27, 2016, a judge of the Supreme Court after a preliminary review of a petition of the ES on the lawsuit about acknowledging the conclusion of the State Environmental Assessment on the materials of the “Environmental Impact Assessment” for the project of “Construction of an Autoroad to the Mountain Ski Resort “Kokzhailau” to be illegal and about its cancellation, denied forwarding it for a revision to a cassation instance of the Supreme Court.

The judge extremely poorly studied the case’s materials. He even did not understand that it is a question of a planned clear-cutting of plants listed in the Red Book, and not about performed cuttings. In the determination, he wrote: “Clear-cutting of the vegetation was performed by the Republican State Authority ‘Ile-Alatau State National Natural Park’ on the basis of the received permits.” Even though, the documents presented to the court indicate multiple times that, firstly, nobody issued permits to clear-cut the Red Book plants. Secondly, in accordance with the legislation, no state organ has a right to issue such permits. And thirdly, no clear-cutting has been performed yet in the national park.²⁰

In violation of the Article 72 and paragraph 1 of the Article 224 of the CPC, the judge did not review the proofs referred to by the ES regarding the lack of authorities in all state organs of the Republic of Kazakhstan to clear-cut or remove (сhoc) the Red Book plants.

When reviewing other petitions of the ES, judges did not apply the norms of the international conventions and regulatory resolutions of the Supreme Court which emphasize the priority of the international agreements.

On November 14, 2016, during a preliminary review of the petition about acknowledging the material of inventory and forest pathology examination of vegetation to be illegal and about its cancellation,²¹ a judge of the Supreme Court repeated the argumentation of the SIEC of the city of Almaty. He stated that “the disputed material does not cause legal consequences for the claimant.”²² In its petition, the ES clearly justified its arguments based on the provisions of the paragraph 5 of the Article 2, paragraphs 2 and 3 of the Article 9 of the Aarhus Convention. They state that public organizations have right to defend interests of undefined number of people. This right is also stipulated in the Article 14 of the Environmental Code. But the judge intentionally or due to a lack of professionalism, ignored these norms and created obstacles for access

to justice. As a result, the ES was not able to dispute in the court the obviously illegal document, which became a basis for an important decision of the state authorities.

A similar situation occurred with the above mentioned case about cancellation of the conclusion of the state environmental assessment on the materials of the EIA for the construction of an autoroad to the mountain ski resort.²³ In the lawsuit, appeal, petition, and during the court hearings, the ES emphasized multiple times that Kazakhstan signed the Convention on Biological Diversity which regulated relations in protection of Red Book plants and the territory where they grow. Judge of the Supreme Court did not say a word about the Convention, did not apply its provisions, but indicated in the determination that there were no violations of material and procedural law on the case.²⁴

On June 27, 2016, the Supreme Court Civil Affairs Board preliminary reviewed a petition of the ES. It was related to inaction of the Ministry of Culture and Sports which did not take necessary measures for protection of a site of the world heritage—Talgar site of ancient settlement.²⁵ The Board denied satisfying the petition, even without mentioning a word about the Convention Concerning the Protection of the World Cultural and Natural Heritage.

Earlier, March 21-23, 2016, a mission of the International Council on Monuments and Sites (hereafter—ICOMOS) visited the country by an official request of the Republic of Kazakhstan. The mission admitted violation of a number of requirements of the World Heritage Convention. The mission noted that it was necessary to strengthen the control over implementation of the law “About Protection and Utilization of Sites of Historical and Cultural Heritage,” bring it in compliance with the terminology and mechanisms of the Convention. Besides, it is necessary to strengthen the mechanism of compliance with the Convention in the country, introduce changes to the Land Code, in order to prevent destruction of monuments.²⁶ In July 2016, the conclusions of the ICOMOS mission were included into the decision of the 40th session of the World Heritage Committee.²⁷ This confirmed correctness of the ES’s position.

In the regulatory resolution of the Supreme Court No.1 dated on January 15, 2016, it is said: “Implementing the indicated constitutional powers, the Supreme Court ensures uniform interpretation and application of the law during civil proceedings.”²⁸ But practice shows that the Supreme Court judges themselves not always interpret and apply laws uniformly.

Besides, practice of preliminary reviewing in the Supreme Court clearly demonstrates its unreasonableness. Case outcome depends on competency of a single judge,²⁹ which is a practical obstacle to just and unbiased court proceedings.

From 2014 to beginning 2017, nine petitions of the ES which were based on the Aarhus Convention, Convention on Biological Diversity, and World

Heritage Convention were denied as a result of a preliminary case reviewing by the Supreme Court. Thus, the Supreme Court judges violated regulatory resolutions No.1 dated on July 10, 2008, “About Application of the Norms of International Agreements of the Republic of Kazakhstan” and No.1 dated on January 15, 2016, “About the Right to Access Justice and Powers of the Supreme Court of the Republic of Kazakhstan in Reviewing Judicial Acts.”

6. Execution of Court Decisions and Judgments

According to the paragraph 2 of the Article 21 of the CPC, “judicial acts that came into legal force... are obligatory for all state organs, local governments, juridical persons, authorities, citizens, and are subjected to execution on the whole territory of the Republic of Kazakhstan.

Practice shows that judicial acts that came into legal force are not always implemented, and often it is specifically state organs and authorities who fail to execute court judgments. A lot of efforts are needed to ensure execution of even the Supreme Court judgments.

For example, the Supreme Court Supervisory Board’s judgment dated on November 27, 2013, is still not executed. The judgments were made based on a lawsuit from the public about inaction of the Director of the Department of Sanitary and Epidemiological Control in the City of Almaty. He did not provide control over on-site marking of sanitary and protection zones with special signs.³⁰

On October 3, 2014, due to failure to execute the judgment mentioned above, the claimants filed a lawsuit about inaction of the officer of the court of the Department of Judicial Acts Enforcement of the City of Almaty. During the court hearings, the Department representative admitted the allowed violations. On December 24, 2014, a judgment about renewal of the enforcement proceeding was made. But in 2015, the judgment was still not executed. Moreover, on May 16, 2016, the court officer made another judgment about termination of the enforcement proceeding.

In this regard, on August 3, 2016, by a statement from the claimants, the Supreme Court Supervisory Board made a new determination. It states that the Director of the Department “as an authority—head of a juridical entity” is assigned for the control over on-site marking of the sanitary protection zones.³¹ Based on the Supreme Court determination dated on August 3, 2016, an enforcement proceeding was initiated again, but is still not executed.³²

Another example strikes by its absurdity. The case about inaction of an akim who for several years did not undertake measures to liquidate an illegal dumpsite on an abandoned lot was already mentioned above. The case was reviewed in the Supreme Court twice.

On October 20, 2011, the Supreme Court Supervisory Board denied satisfying the claimants’ petition by which it has “admitted the rights” of the

dumpsite for unlimited existence and disturbance of the local residents! On June 13, 2016, for the second time, the Supreme Court Board “confirmed the rights” of the dumpsite and the right of the akim to be inactive.

Since however, the court of the first instance acknowledged the inaction of the akim, the ES filed letters to the judge on July 31 and August 13, 2016, with a request to issue a writ of execution. The ES demanded to oblige the state organ to eliminate the “allowed violation and recover the violated rights, freedoms, and lawful interests of the citizens” in accordance with the paragraph 1 of the Article 227 of the CPC. The writ of execution still hasn’t been issued. After an inquiry of the ES to the local authorities, the latter promised to liquidate the dumpsite in spring 2017.

The lawsuit about the dumpsite of a size of a volleyball court lasts for over six years!

7. Legal Consequences of Illegal Decisions and Judgments of the Courts

Studying protocols of court hearings, decisions, and judgments allows determining with a high level of accuracy which parties are interested in obtaining illegal court acts.

For example, during court hearings on the ES lawsuit about inaction of the Ministry of Culture and Sports which did not ensure security of the world heritage site,³³ it became clear that the state organs didn’t even try to stop the construction by the judicial methods. This resulted in destruction of the southern part of the ancient settlement. Question about the status of the land where the site is located is still not clear.³⁴ Destruction of such monuments is a criminal liability, but neither the authorized organs, nor the prosecutor’s office have intents to sue the guilty. Real benefit from the occurred situation was received by the companies implementing the state order on construction of the road which is financed from the state and local budgets. Due to cancellation of the previous project, additional funds will be allocated for developing and construction of a new road bypassing the ancient settlement. Owners of the residential houses built right next to the ancient settlement benefited as well, because of the significant increase in the land prices in the area.

The mechanism of the state order was used in the case with the mountain ski resort “Kokzhailau” as well. Practicability of its construction is being discussed for many years already. According to the official data, only by November 2015, project development and preparation to the construction took 8 billion tenge from the budget.³⁵ In doing so, a threat of destruction of plants listed in the Red Book appeared in the area of construction of a road to the future resort. But courts of all levels with their decisions practically made it legal to cut those plants. Courts and the prosecutor’s office turned blind eyes on the factual preparation to a criminal violation.

The example of the project of construction to the mountain ski resort clearly demonstrates the mechanism of adopting illegal decision. The initiator of the project is the Akimat (the Mayor's Office). "Pocket" LLC makes a conclusion based on inactive legislation. Based on that, another LLC develops an EIA, formal public hearings are held. Department of Natural Resources (subdivision of the Akimat) conducts the state assessment. And finally, the Department of Architecture and Urban Planning (subdivision of the Akimat) approves the project. The court finds the illegal conclusion of the environmental assessment to be legal and the Department of the Natural Resources bypassing the law can issue a permit to cut the Red Book plants. After that, the known principle comes to force: well, since it is already built, let it stay. All violators are happy!

In the both cases, the winning party is the corrupted officials, commercial structures interested in receiving the state order, land owners who wish to expand their properties at the expense of the state lands which haven't been privatized yet, and criminal structures. They cover themselves by talking about important social projects: creating jobs, development of tourism, care of the disabled. But, in fact, they do not care about public interests, destruction of cultural monuments, non-restorable damage to the nature, and harm to people's health.

Due of the "influence" of the interested groups, efforts of public organizations in judicial defence of the interests of undefined number of people and the state meet an open resistance from the courts and prosecutor's office. Public representatives are oppressed and discriminated by deprivation from realization of their right on judicial defence. Thus, not only the norms of the national legislation are violated, but also the requirements of the paragraph 8 of the Article 3 of the Aarhus Convention and the Article 26 of the International Covenant on Civil and Political Rights.³⁶ Courts impede public associations to follow the obligations in protection of the environment stipulated in the subparagraph 1, paragraph 2, Article 14 of the Environmental Code.

Dependence of courts on the organs of the local executive power is quite obvious and clear. Unofficially, authorities set a goal for the courts to protect them from any, even the most insignificant, accusations in a lack of competence and corruption, provide them with impunity and permissiveness. As a result, efficiency of work of the courts is decreasing, and even the simplest cases turn into long proceedings. The Supreme Court reviews cases which could have been resolved on the local level without addressing to the organs of justice. The snow ball of petty cases and unimplemented court decisions grows, while the violators feel themselves quite comfortable and more and more boldly trample upon the law.

Thus, the court decisions lead to legalization of activity which contradicts to international agreements and national legislation; create conditions for new and

more serious violations of human rights on favourable environment; contribute to increase of social tension and deterioration of ecological safety; growth of corruption; impede development of environmental democracy; disrupt trust to the state organs, and undermine international reputation of the country.

- 1 Law of the Republic of Kazakhstan “About Architecture, Urban Planning, and Construction Activity in the Republic of Kazakhstan” (with the amendments as of April 7, 2016), subparagraph 2, paragraph 1, Article 3: “Public interests—interests of population of specific regions, cities, towns, villages, and other settlements in ensuring favourable living (staying) conditions on the territory, improvement of ecological situation, prevention of dangerous (harmful) impacts as a result of economic or other activities, infrastructure development of the settlements and their vicinities, preservation of the sites of historical and cultural heritage, and natural values.”
- 2 In 2015-2016, the following entities were brought to trial as defendants:
 - Department of Passenger Transportation and Autoroads of the City of Almaty;
 - Forestry and Wildlife Committee of the Ministry of Agriculture;
 - Department of Natural Resources and Nature Management of the City of Almaty (2 lawsuits);
 - Ministry of Culture and Sports of the Republic of Kazakhstan;
 - Akimat of the City of Almaty (2 lawsuits);
 - Consumer Rights Protection Department of the City of Almaty (1 new lawsuit and 1 failure to execute a court decision).
- 3 Corruption Perceptions Index 2015: Indicators for Kazakhstan Stay the Same, <http://tikazakhstan.org/indeks-vopriyatiya-korrupsiy-2015-pokazateli-kazahstana-ostayutsya-prezhnimi> (last visited November 18, 2016).
People and Corruption: Kazakhstan (Barometer of the World Corruption—2016), <http://tikazakhstan.org/lyudi-i-korrupsiya-kazahstan-barometr-mirovoj-korrupsiy-2016/> (last visited November 18, 2016).
- 4 Appealing these court judgments about state fee payment could last for several months. These cases were lost, therefore, the state fee was not returned.
- 5 Civil Procedural Code of the Republic of Kazakhstan (with amendments as of April 6, 2016), paragraph 4, Article 54.
- 6 Law of the Republic of Kazakhstan “About the Prosecutor’s Office” (with amendments as of April 6, 2016), paragraph 4, Article 4.
- 7 2016. Case No.1 about acknowledging of the EIA on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal in the part of preservation of Red Book plants and about its cancellation (See the case No.7, 2015), http://esgrs.org/?page_id=11726.
- 8 Regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated on July 10, 2008, No.1 “About Application of the Norms of the International Agreements of the Republic of Kazakhstan” (with amendments as of December 30, 2011), paragraph 10, <http://sud.gov.kz/rus/legislation/CAT01/79691/2008> (last visited November 29, 2016).
- 9 2016. Case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
- 10 Regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated on November 25, 2016, No.8 “About Some Questions of Application of the Environmental Legislation of the Republic of Kazakhstan by the Courts on Civil Cases,” paragraph 16, <http://sud.gov.kz/rus/legislation/CAT01/79693/2016> (last visited December 21, 2016).
- 11 2016. Case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project

- “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
- 12 Decision of the SIEC of the city of Almaty No.2-16009/2015 dated on November 6, 2015.
 - 13 Statement of the Appeal Board of the Almaty City Court No.2A-8416/2015 dated on December 28, 2015.
 - 14 2016. Case No.1 about acknowledging of the EIA on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal in the part of preservation of Red Book plants and about its cancellation (See the case No.7, 2015), http://esgrs.org/?page_id=11726.
 - 15 Decision of the SIEC of the city of Almaty dated on March 11, 2016. The judge referred to the case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
 - 16 2016. Case No.7 about acknowledging to be illegal and cancellation of the “Material of Inventory and Forest Pathology Examination of Vegetation” prepared by “K...” LLC with violation of the legislation of the Republic of Kazakhstan, http://esgrs.org/?page_id=11726.
 - 17 2016. Cases No.1 and No.3.
 - 18 2016. Case No.2 about providing of inauthentic environmental information about construction of a cable road on the territory of a national park by the Forestry and Wildlife Committee (See the case No.8, 2015), http://esgrs.org/?page_id=11726.
 - 19 2016. Case No.6 about inaction of an organ of state administration which lead to a serious deterioration of ecological situation in the village of Besagash and violation of the citizens’ rights on favourable environment (See cases No.8, 2010; No.2, 2011; No.13, 2015), http://esgrs.org/?page_id=11726.
 - 20 2016. Case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
 - 21 2016. Case No.7 about acknowledging to be illegal and cancellation of the “Material of Inventory and Forest Pathology Examination of Vegetation” prepared by “K...” LLC with violation of the legislation of the Republic of Kazakhstan, http://esgrs.org/?page_id=11726.
 - 22 Ruling of the Judicial Board of the Supreme Court No.3r-10191-16 dated on November 14, 2016.
 - 23 2016. Case No.3 about acknowledging of the conclusion of the state environmental assessment on the materials “Environmental Impact Assessment” on the project “Construction of the Road to the Mountain Ski Complex ‘Kokzhailau’” to be illegal and about its cancellation (See the case No.10, 2015), http://esgrs.org/?page_id=11726.
 - 24 Ruling of the Judicial Board of the Supreme Court No.3r-9967(2)-16 dated on November 14, 2016.
 - 25 2016. Case No.4 about inaction of a state organ in controlling of observance of legislation in the area of protection and utilization of historical and cultural sites, namely, in regard of Talgar ancient settlement (See the case No.11, 2015), http://esgrs.org/?page_id=11726.
 - 26 Report on the ICOMOS Advisory Mission to Kazakhstan. The Talgar component (S 01-KZ-01) within the serial World Heritage property Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China, Kazakhstan, Kyrgyzstan) (C 1442). 20 to 28 March 2016, pp.26-29, <http://whc.unesco.org/en/list/1442/documents>.
 - 27 Decision: 40 COM 7B.34 Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (China / Kazakhstan / Kyrgyzstan) (C 1442), <http://whc.unesco.org/en/decisions/6699/>, (last visited September 2, 2016).
 - 28 Regulatory resolution of the Supreme Court of the Republic of Kazakhstan dated on January 15, 2016, No.1 “About the Right of Access to Justice and Direct Authorities of the Supreme Court of the Republic of Kazakhstan in Reviewing Judicial Acts,” <http://sud.gov.kz/rus/legislation/CAT01/79691/2016>.

- 29 CPC, Article 443.
- 30 2016. Section No.2. Implementation of court decisions. Case No.1 Ruling of the Supervisory Board of the Supreme Court dated on November 27, 2013, on the lawsuit about inaction of a Director of a Department of the Committee of State Sanitary and Epidemiological Control in the City of Almaty which expressed in a lack of control over on-site marking of sanitary and protection zones with special signs (See the case No.9, 2012, and the case No.4, 2013), http://esgrs.org/?page_id=11726.
- 31 Supreme Court Civil Affairs Judicial Board Ruling dated on August 3, 2016. Section No.2. Implementation of court decisions. Case No.1, http://esgrs.org/?page_id=11726.
- 32 For more detail, please, see the material about implementation of this ruling prepared by the local residents, available in this digest: “Enforcement Proceedings of the Supreme Court Ruling,” p.68.
- 33 2016. Case No.4 about inaction of a state organ in controlling of observance of legislation in the area of protection and utilization of historical and cultural sites, namely, in regard of Talgar ancient settlement (See the case No.11, 2015), http://esgrs.org/?page_id=11726.
For more detail, please, see the material available in this digest: “Site of Ancient Settlement Talgar—the World Heritage Is in Danger!”, p.22.
- 34 State of conservation report the Republic of Kazakhstan “Silk Roads: the Routes Network of Chang’an-Tianshan Corridor (Kazakhstan, China, Kyrgyzstan): the Talgar, Koilyk, Karamergen, Aktobe, Kulan, Kostobe, Ornek sites and the Akyrtas archaeological complex (Kazakhstan territory).”—Astana, 2017, <http://whc.unesco.org/en/list/1442/documents/>, pp.6-10.
- 35 8 billion tenge are already spent on the project of mountain ski complex “Kokzhailau,” <http://esgrs.org/wp-content/uploads/2015/12/letter7078-akimat-KJ.pdf>.
- 36 International Covenant on Civil and Political Rights (New York, December 16, 1966). Ratified by the Law of the Republic of Kazakhstan dated on November 28, 2005, No.91-III. Entered into force for the Republic of Kazakhstan on April 24, 2006. “Article 26. All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

NOVELS OF THE NEW CIVIL PROCEDURAL CODE OF THE REPUBLIC OF KAZAKHSTAN*

Alma Omarbekova, lawyer,
Ecological Society Green Salvation,
Almaty, Kazakhstan

Each new legislative act, ideally, must improve the process of regulation of social relationships absorbing the most progressive theoretical research and achievements of judicial practice for the given period of development.

Based on this, the new Civil Procedural Code of the Republic of Kazakhstan (hereafter—the Code) which came into force on January 1, 2016, is not an exception.

Developers of the new Code aimed to:

- simplify civil legal proceedings;
- ensure acceleration of procedural activity of courts in protection and recovery of violated rights and lawful interests of physical and juridical persons;
- facilitate realization of procedural responsibilities by the persons participating in the process, based on criteria of honesty.

Author of this material give a brief analysis of novels of the Code paying a special attention to implementation of these norms in resolving environmental disputes.

In general, the new Code comply with the requirements presented to a regulatory and legal act intended to protect violated or disputed rights, freedoms and lawful interests of the state, physical and juridical persons.

At the same time, some norms of the Code need changes and additions, and a number of the norms need to be profoundly corrected or eliminated.

Let us draw our attention to the main novels of the new Code.

Three-tier Judicial System

The Code establishes a three-tier judicial system which includes courts of the first, appeals, and cassation instances, instead of the previously existed four-tier system, which consisted of courts of the first, appeals, cassation, and supervision instances. Given this, the authorities of the supervision instance in revision of judicial acts which came into a legal force will be performed by the cassation instance represented by a specialized judicial board of the Supreme Court of the Republic of Kazakhstan. Thus, in the system of oblast courts and courts equated to them, the cassation judicial instance was abolished.

It should be noted that according to the Code, courts of the first instance are the district courts, given this, the Court of the city of Astana (appeals instance) reviews and resolves civil lawsuits on investment disputes, applying the rules of a court of the first instance, except for cases within the jurisdiction of the Supreme Court of the Republic of Kazakhstan. The Supreme Court reviews and resolves civil cases on investment disputes which involve a large investor as a party, applying the rules of a court of the first instance. The Supreme Court, as well as the Court of the city of Astana, is not a court of the first instance. Thus, the norms introduced into the Code contradict the instituted three-tier system of instances of the unified civil process. The lawmaker decided to bring investment disputes into a separate category. They are reviewed with abidance of special procedures which are different from those applied during regular civil cases. It would be more logical to create a specialized investment court in the city of Astana, Almaty, and cities of other oblasts of the country that is equated to a district court.

Appeals Instance

Appeals and protests are filed during one month after a decision is made in its final form, and for the persons who did not participate in the court hearing, from the date of filing them a copy of the decision.

Appeals and protests over decisions made by district courts and courts equated to them are reviewed by a civil and administrative affairs appellate judicial board of an oblast court or a court equated to it. The board must consist of, at least, three judges.

In the simplified (written) proceeding order, appeals and protests over decisions made by district courts and courts equated to them, as well as private appeals and protests over a determination are reviewed by one judge.

Reviewing period in a court of the appeals instance was increased to two months (Article 415).

Courts of the appeals instance are returned their authorities to:

- cancel decisions and re-file cases to courts of the first instance for re-examination;
- accept cases into their own proceeding for examination on the merits applying the rules of the courts of the first instance.

A base for cancellation or alteration of a court's decision in the appeals order was added:

- if a case lacks of a protocol of the court hearings, a separate legal proceeding, when it is required by the Code.

According to the new Code, it is obligatory to go through a court of the appeals instance. If the deadline for appealing judicial acts has passed, the parties must address the court with a request to reinstate the period for appeals.

Cassation Instance

By a general rule, cassation petition and protest can be filed to the Supreme Court during six month beginning from the date when a judicial act entered its legal force.

The Code retained a rule about preliminary hearings of a petition. But instead of three judges, it will be reviewed by a single judge (Article 443 of the Code).

When there is a basis for re-examination of a judicial act, a judge issue a ruling about sending the petition for a review to cassation instances (Article 444 of the Code).

At the cassation instance, cases are reviewed collectively by an odd number (not less than three) judges.

Cases on reviewing cassation instance court rulings are examined collectively by an odd number (not less than seven) of judges presided by the Chairman of the Supreme Court or one of the judges on his/her behalf.

A threshold defining judicial acts which are not subjected to a review in a cassation order was introduced for cases when:

- appeal order was not observed;
- the amount of a lawsuit related to property interests of physical persons is less than two thousand monthly rated indices (about 4 million tenge) or the amount of a lawsuit related to property interests of juridical persons is less than thirty thousand monthly rated indices (about 60 million tenge), and some other categories of judicial acts.

Proofs

According to the new Code, parties and other persons participating in a lawsuit must present all proofs to the court of the first instance at the stage of preparation of the case for the court hearings. In exceptional cases, the proofs can be presented during court hearings, and also to a court of the appeals instance. But the reason why the proofs were impossible to present at the stage of preparation to the court hearings must be justified by the persons who present them.

Proofs which were not presented during preparation of a lawsuit to the court hearings now cannot be presented to the courts of the higher instances. The parties have a right to reference only the proofs which were disclosed during preparation of the lawsuit to the court hearings and, in exceptional cases, during court hearings.

Court's consideration as a proof of audio and video recordings made secretly is still a vital issue. There is no a direct prohibition on that in the new Code. On the contrary, paragraph 2 of the Article 65 stipulates that audio and video recordings, including those made by surveillance and/or fixation devices, photo and/or filming materials, other materials recorded on electronic digital and other material carriers, can serve as allowed proofs.

State Dues

New rules of the state dues amount calculation are defined. For example, when filing lawsuits about collection of compensation for moral damage, the amount of the dues is calculated based on the collection amount claimed.

According to the paragraph 2 of the Article 109 of the new Code, a judge has a right to charge all the judicial expenses related to a case on the person abusing procedural rights or not observing procedural obligations. In particular, a court can resort to this measure, if it regards as the judicial proceeding is being dragged out and obstacles are being created for reviewing the case and for adopting a lawful and justified judicial act. For example, if proofs are presented with violation of the timeframe determined by the court, or the order of the proofs presentation defined by the present Code, is not followed without grounded reasons.

In accordance with the paragraph 5, Article 109 of the new Code, a statement about collection of judicial expenses can be submitted during one month beginning from the date of the last judicial act came into its legal force, by which the lawsuit's examination on its merits ended.

A maximum amount of representation expenses on non-property related requirements is defined not to exceed three hundred monthly rated indices.

If a lawsuit is left without a movement based on subparagraphs 6) and 8) of the Article 279 of the present Code, the claimant is to compensate the defendant with judicial expenses incurred in relation to the lawsuit proceedings.

If a lawsuit is resolved peacefully in a court of the first instance, the state dues are subjected to compensation in the full amount, in the cassation instance—only a half of the state dues paid.

Requirement to pay state dues when filing appeals is repealed.

Order of Notification

The new Code clearly regulates the order of notification and also describes cases when a notification of a party is considered to be made properly. For example, court notice paper or other writs addressed to a juridical person can be handed not only to a representative of a corresponding person carrying out managerial functions. It can be handed to a security officer or other employee of the person who is being notified and called out to a court. The person receiving a writ must sign a writ's slip or on a copy of another notification about its receipt with indication of their title, last name and initials.

The court notice papers or other writs are considered to be delivered to a juridical person at the place of its location, even if the juridical person is absent at the specified address. Refusal of the addressee to accept the court notice or other writs is not an obstacle for the case consideration or execution of procedural actions, and the person is considered to be notified in a proper

manner. Despite of introduction of electronic forms of notification, a mechanism for determination of a delivery date of court notices and other writs was not thought through. This allows counting down at one's own choosing the time period provided for filing of an appeal and other documents.

Requirements to the Form and Content of a Lawsuit

Lawsuit form and content requirements were added. It is obligatory to indicate:

- calculation of monetary funds being collected or disputed;
- a list of documents attached to the lawsuit.

A lawsuit must be accompanied by a document proving that copies of the lawsuit and documents attached to it have been filed to the defendant or his/her representative, third parties.

Preparation of a Case to Court Hearings

Due to the fact that the stage of preparation of a case to court hearings became more significant, time allocated for the preparation was increased from 7 to 15 working days starting from the day of accepting of the lawsuit into the court proceedings. In exceptional case, the preparation period can be prolonged for an additional month. The Code lacks of a norm which would allow to take effective measures on matters related to the environment, which creates obstacles for protection of rights and interests of physical and juridical persons who were subjected to harm or damage as a result of the environmental legislation violation.

Actions of a court and a lawsuit parties are regulated at the stage of the case preparation to court hearings. In particular, the parties can exchange written documents, questions about proofs, necessity of expert examinations, filing a counter-claim, involving new participants into the case are being solved.

Disputes Resolution by Peaceful Means

Possibilities for resolving disputes by peaceful means are broadened, starting from obligatory actions of a judge on reconciliation of the parties at the stage of preparation of a case, and further on, at all stages of legal proceedings. Different kinds of reconciliation procedures are introduced: reconciliation, mediation, participatory procedure, option to address arbitration for resolution of a dispute. A detailed procedure for concluding and implementing an agreement on a lawsuit is described.

An agreement on a lawsuit is concluded in written form and signed by parties or their representatives authorized to do so. When resolving a dispute in the order of mediation, a mediation agreement is concluded in written form between the parties with a facilitation of professional and non-professional

mediators. Resolution of a dispute in the order of participatory procedure is made without a judge by conducting negotiations between the parties facilitated by lawyers from the both parties (Article 181 of the Code).

Other Procedural Norms

Persons participating in a case and citizens present at a court hearing must address the judge as “Respected court” (paragraph 2, Article 187 of the Code).

Copies of a decision (in absentia) must be sent or handed over to parties and other persons participating in a case, who did not come to a court hearing, not later than three working days from the day the decision was adopted in its final form.

Executive writ can be made in a form of an electronic executive document which is certified by an electronic digital signature of a judge (paragraph 4, Article 241 of the Code).

A brief protocol shall be compiled when an audio or video recording has been conducted during a court hearing (paragraph 1, Article 281 of the Code).

If a three months period has passed and has not been recovered when reviewing complaints over actions of state organs and employees, a court makes a decision to deny satisfying a lawsuit.

This norm is not acceptable for cases related to environmental violations, since the latter ones have a protracted and continuous nature. A question about increasing the period for appealing against actions of state organs and employees has been raised multiple times. Besides, when reviewing such cases, courts must follow the norms of the international conventions.

This list of novelties is not exhaustive. There are quite a lot of changes, and we described only the main ones which are applied by courts when reviewing environmental cases.

It has been over a year now that the judicial system in our country implements the new Code in practice. During this time, it is no doubt that all participants of civil proceedings were able to appreciate its advantages and merits. But at the same time, the judicial practice revealed some aspects which need to be adjusted because they cause collisions of the law norms.

In particular, according to the paragraph 2, Article 124 of the Code, a court returns complaints and documents submitted after the procedural period, if the parties did not claim its recovery.

Study of facts related to missing a deadline to address a court and period of limitation is conducted at the preliminary court hearings which is stipulated in the Article 172 of the Code and is a novelty in the legislation.

At the same time, according to the paragraph 6 of the Article 172 of the Code, if a deadline to address a court and a period of limitation were missed without a valid reason, a judge adopts a decision to deny the lawsuit without studying

other factual circumstances of the case. Thus, there is an obvious contradiction in the indicated norms, since a period of limitation and a deadline to address a court are two different things. The Civil Code stipulates a general period of limitation of three years. According to the paragraph 1 of the Article 294 of the Code: “A citizen or a juridical person has a right to address a court with a lawsuit during three months starting from the date when they became aware of a violation of rights, freedoms, and lawful interests.” Therefore, consequences of missing these terms must be different.

Further on, in accordance with the paragraph 2 of the Article 169 of the Code, simultaneous or made in any order change of the subject and base of a lawsuit means that the claimant calls for a new lawsuit and refuses the earlier submitted one. This leads to termination of a proceeding on a case initiated in response to an earlier submitted statement of claim. Simultaneous or made in any order change of the subject and base of a lawsuit is allowed in case of concluding an agreement on resolving of a dispute (conflict) in the order of mediation. Mediation agreement must be approved by a determination of a court which has the given civil case in its proceedings.

The indicated norm is also a procedural novelty. But in practice, there is a difficulty with its implementation, because in the Article 277 of the Code, this basement for termination of a case proceeding is not listed. A question arises: how a court should act in case if a claimant does not agree to terminate the initial lawsuit?

Also in practice, it causes difficulty to calculate the period of appeal of a court decision, due to the different interpretation of the norms of the Article 223 and Article 403 of the Code from the point of the legal technique.

Thus, according to the paragraph 3 of the Article 223 of the Code, a decision is made immediately after the case investigation. Compiling of an extensive decision can be postponed, but an operative part of the decision must be announced by the court at the court hearings when the case was closed. According to the paragraph 4 of the Article 223 of the Code, the decision in its final form must be made in five working days after announcement of the operative part.

In accordance with the paragraph 3, Article 403 of the Code, an appeal and protest can be filed during one month after the date of making the decision in its final form, except for the cases stipulated in the Code. And for the persons absent at the court hearings, after the date when a copy of the decision was sent to them.

In other words, the moment of adopting a decision and the moment of its making in its final form are two different things, and with one of which the beginning of the procedural term is connected. At this, content and idea

of the operative part of the decision from the moment of its adoption and announcement must be identical with the extensive decision.

This twofold interpretation in practice leads to an optional calculation by the parties of the period of appeal of the court decision which was increased to one month.

A serious gap in the new Code is the fact that decisions of international conventions about compliance by Kazakhstan with their norms are not recognized in the Code as a base for re-consideration of decisions of court instances. In other words, they are neither considered to be newly discovered, nor to be new circumstances which have a significant importance for adopting a correct resolution of the earlier investigated cases (Article 455). This significantly reduces chances for physical and juridical persons to defend interests of citizens, undefined number of people, and the state.

Finally, it should be recalled that in the paragraph 2, Article 1 of the Code, the international obligations of Kazakhstan are recognized as “a component of the civil procedural law.” Despite of this, practice of application of the new Code during investigation of environmental cases allows to make a conclusion that the full compatibility of its provisions with the norms of the environmental conventions is not reached. The Code does not take into a full account the provisions of the normative decree of the Supreme Court dated on July 10, 2008, No.1 “About Application of the Norms of the International Treaties Signed by the Republic of Kazakhstan.” This became one of the reasons for adopting a new decree dated on November 25, 2016, No.8 “About Certain Questions of Application of the Environmental Legislation of the Republic of Kazakhstan by Courts Reviewing Civil Cases,” which also regulates application of international nature protection conventions.

The above listed questions often appear in the law enforcement practice. Elimination of the indicated ambiguities and collisions is necessary to establish supremacy of the law.

* Novel—(lat. *no veil ae leges*—new laws) jur. change introduced by a newly adopted law into the current legislation. New dictionary of foreign words—by EdwART, 2009.

ENFORCEMENT PROCEEDINGS OF THE SUPREME COURT RULING

Lubov Gatina,
Almaty, Kazakhstan

On October 17, 2012, several Almaty residents supported by the Ecological Society Green Salvation applied to the court defending their interests and right to live in a favourable environment. Despite of the fact that the Supreme Court ruled in their favour, the ruling has not been implemented, as for the date of publication of this material. One of the participants of the events tells a story about how plaintiffs seek enforcement of the court decision.

For many years, as a result of inactivity and connivance of Almaty officials, we live in buffer zones of a railway and motorway, on a territory of sanitary protection zones (hereinafter—SPZ) of several private industrial enterprises and a cemetery. Our houses are located in close proximity to production facilities that pose a threat to our lives and health. A cement plant that receives, unloads, and manufactures cement products is located on the east side of the residential houses and is the main polluter of the environment.

According to a conclusion of the state environmental assessment dated on February 27, 2007: “The territory of the plant is surrounded by industrial enterprises in all directions, except for the west. Railway tracks are located to the west followed by residential houses. The nearest residential houses are located at a distance of 40 meters from the border of the industrial site in the south-west direction... Class of the sanitary risk ... —class III with a radius of the regulatory sanitary protection zone of 300 meters. The residential houses are located on the territory of the regulatory SPZ.”

In 2011, the environmental situation became significantly worse as a result of reconstruction and expansion of Bokeykhanov Street, the street where we live. The intensity of traffic increased, and new heavy diesel locomotives appeared on the railway, the level of vibration increased significantly. This led to formation of numerous cracks on walls and foundations of our houses.

Appeal to the city akim (mayor) about our discrimination by the place of residence and violation of our rights to favourable and healthy environment was not heard. If the authorities were in compliance with the law, we would have long been resettled in another district.

In 2006, the Medeu District Court, and in 2009, the Bostandyk District Court recognized all conclusions of the state environmental assessment as being legal. Consequently, the size of the plant’s sanitary protection zone of 300 meters was also legally recognized. However, the state bodies did not make sure that

the sanitary protection zone was properly organized, that its requirements are closely observed, and that its borders are marked on site with special signs. Sanitary protection zones of other enterprises were not marked on site either.

In this regard, we appealed to the Department of Sanitary and Epidemiological Control in the City of Almaty with a request to show us the special signs on site denoting the boundaries of the sanitary protection zones and buffers. In the absence of the signs, we asked the Director of the Department to monitor their installation by the owners of these facilities. We reminded him that according to the paragraph 1 of the Article 121 of the Land Code, sanitary protection zones and buffers are established: “In order to ensure safety of the population and create necessary conditions for operation of industrial, transportation, and other types of facilities.”

On September 14, 2012, we received a response. In essence, it said that control over marking of sanitary protection zones with special signs on site is not a responsibility of the Department. Therefore, we were denied an access to information. We regarded such an answer as inaction of the official and appealed to a court.

The lawsuit lasted more than a year. On November 27, 2013, the supervisory board of the Supreme Court adopted a ruling recognizing the failure to monitor the layout and marking of sanitary protection zones on site to be inaction of the Director of the Department. He was ordered to monitor and provide the claimants with documents reflecting the location of their homes and the boundaries of the sanitary protection zones.

The resolution noted that state authorities are obliged to provide timely, complete, and reliable information, in accordance with the national legislation and the Article 4 of the Aarhus Convention.

2014

On January 6, based on the above mentioned Supreme Court ruling, a writ of enforcement was issued. The debtor for this case was the Director of the Department of Sanitary and Epidemiological Control of the City of Almaty.

On January 23, executive proceedings were instituted for No.02/1691, No.02/1692 on the basis of the executive document No.2-7091/12 of January 6, 2014, issued by the Medeu District Court.

On January 25, the executive proceedings were transferred to the bailiff K....

On February 12, a complaint was filed to the Prosecutor’s Office of Medeu District in connection with the inaction of the court bailiffs of the Courts Administrator of the City of Almaty. On February 15, we received a response that our complaint was sent to the Prosecutor’s Office of Almaty. Also, we were informed that a special group was created at the city prosecutor’s office to monitor the executive proceeding.

On February 12, a complaint about the bailiff's inaction was filed to the Supreme Court's Judicial Administration Committee. On March 5, the Committee sent it to the Head of the Department for Judicial Acts Enforcement of the City of Almaty. On March 18, a reply was received. It said that the Department will consider the complaint. In case of disagreement with the Department's decision, we were suggested to apply to a court.

On April 23, we filed a complaint again to the Prosecutor of the City of Almaty. The complaint was about inaction of the bailiff K... and the Head of the Section for Enforcement of Non-property Related Obligations. No answer was received.

On April 23, we filed another complaint to the Department for Judicial Acts Enforcement. On May 19, we received a reply signed by the Deputy Head of the Department. It informed us that an official check is being carried out regarding the inaction of the bailiff and the Head of the Section.

Our appeal of April 23 sent through the websites of the General Prosecutor's Office and the Ministry of Justice, was followed by a reply signed by the Deputy Head of the Department on June 25. The bailiff K... was instructed to take measures for enforcement of the ruling of the Supreme Court.

However, when we got acquainted with the materials of the executive proceedings, we found out that it was terminated back in April 24, 2014. We were not aware of this until September 25, 2014, when we received a copy of the resolution on its termination. This decision was made with a number of severe violations of norms of the material and procedural law:

- there was no legal basis for termination of the executive proceedings;
- the resolution was not properly approved;
- we were not properly notified within the time period established by law.

On October 31, we filed a complaint to the Medeu District Court on recognizing the actions of the bailiff K... to be illegal and cancellation of the resolution on termination of the executive proceedings dated on April 24, 2014.

During the court hearings, a representative of the Department for Consumer Rights Protection (before August 2014, known as the Department of Sanitary and Epidemiological Control of the City of Almaty), being a debtor in this case, persistently requested the court to keep the decision of the bailiff in force.

Based on reliable and sufficient evidence provided by us, the court found that the actions of the bailiff were illegal. A representative of the Department for Judicial Acts Enforcement (hereinafter—the Department

for Enforcement), agreed with the findings of the court and withdrew the decision on termination of the executive proceedings.

On November 3, the Medeu District Court issued a ruling to cease the proceeding, since the Department for Enforcement admitted its unlawful actions and withdrew the decision.

On October 28, the Department for Enforcement cancelled the decision of the bailiff K... on termination of the proceedings dated on April 24, 2014, and re-initiated the executive proceedings.

On November 19, the Head of the Department for Enforcement was sent a complaint about inaction of the bailiff K... for not issuing a copy of the resolution about re-initiation of the executive proceedings and did not respond to the written request.

On December 8, the Head of the Department for Enforcement was sent another complaint about inaction of the bailiff K..., who did not respond to our complaint dated on November 19.

Due to the failure to enforce the court decision and failure to answer our complaints filed to the Department for Enforcement dated on November 19 and December 8, we appealed to the Prosecutor of the City of Almaty again. On December 29, we received a reply signed by the senior assistant to the Prosecutor of the City of Almaty. It said that our appeal was sent to the Department for Judicial Acts Enforcement with instructions to take measures to enforce the judicial act.

2015

On February 3, we met with the Director of the Department for Consumer Rights Protection and asked to explain how he intends to implement the Supreme Court ruling.

On February 3, we filed the bailiff with a statement about limitation of the defendant's travel outside of the Republic of Kazakhstan.

On February 9, the Medeu District Court authorized the decision of the bailiff to temporarily limit the Department Director's travel outside of Kazakhstan.

On February 27, we filed a statement to the bailiff with a demand to collect fines from the debtor due to the failure to implement the Supreme Court ruling for 61 days.

On March 12, the bailiff filed the statement to the Medeu District Court to collect the fines. On March 26, the court refused to satisfy the statement. The court explained the refusal by the fact that the bailiff, allegedly, did not specify a deadline for implementation, although the law on enforcement proceedings requires immediate implementation of a court ruling.

On May 12, we provided the Department for Consumer Rights Protection with a detailed list of 11 enterprises with their full names and addresses; our homes are located in the sanitary protection and buffer zones of these

enterprises. We asked to provide mapping materials with marking the zones in the global positioning system.

On June 12, a similar list was submitted to the Department for Enforcement.

On July 28, we filed complaints to the Main Transport Prosecutor's Office with a request to suspend the work of the railway near our land plots. On August 7, we received a response that complaints will be reviewed.

On July 28, we filed a complaint to the Almaty City Prosecutor's Office against the inaction of the Director of the Department for Consumer Rights Protection.

On August 7, not having received an answer from the city prosecutor's office, and due to a failure to implement the Supreme Court's ruling, we filed a complaint against the inaction of the Department for Consumer Rights Protection addressed to the Prosecutor General. On August 26, we received a response from the Almaty City Prosecutor's Office that the Director of the Department was brought to administrative responsibility on August 20 and fined.

On October 27, a statement was submitted to the Supreme Court regarding the malicious incompliance with the Supreme Court's ruling. On November 6, the Supreme Court notified us that our statement was sent to the Ministry of Justice and the General Prosecutor's Office.

On November 24, after the Ministry of Justice reacted to our statement, the bailiff K... filed the statement to the Medeu District Department of Internal Affairs to bring the Director of the Department for Consumer Rights Protection to criminal liability. The basis is the failure to comply with a judicial act, which came into a legal force, for more than six months, Article 430 of the Criminal Code. We were officially notified about this by a letter signed by the acting Head of the Department of Justice of the City of Almaty.

Since the transfer of the materials of the enforcement proceedings to the Medeu District Department of Internal Affairs, it was basically stopped. Medeu District Department of Internal Affairs ceased the pre-trial investigation several times, allegedly, due to a lack of corpus delicti in the actions of the Director of the Department. We appealed the decisions to terminate the pre-trial investigation with the district prosecutor's office, which abolished them.

Finally, the pre-trial investigation was transferred to the Department of Internal Affairs of the City of Almaty (hereinafter—DIA). Later, the pre-trial investigation was terminated again with consent of the Almaty City Prosecutor's Office.

In December, we met with the acting Director of the Department for Consumer Rights Protection. He promised that the court ruling would be implemented no later than January 2016.

2016

On May 16, while the case was in the DIA, the bailiff issued a statement about termination of the enforcement proceedings again, this time justifying it

by retirement of the Director of the Department for Consumer Rights Protection. Article 47 of the law “On Enforcement Proceedings and the Status of Bailiffs” does not provide for termination of enforcement proceedings due to retirement of a defendant. Therefore, we filed a statement to the Medeu District Court to cancel the decision of the bailiff because of the illegality of his actions. The court refused to satisfy the statement. We filed an appeal to the civil affairs board of the Almaty City Court. Simultaneously, a statement was filed with the Supreme Court with a request to clarify the procedure for implementation of the Supreme Court ruling of November 27, 2013.

On August 3, the supervisory board of the Supreme Court issued a ruling. It stated that control over marking of the sanitary protection zones on site was assigned to the Director of the Department for Consumer Rights Protection “as an official representative—head of a legal entity.” He is also required to provide the plaintiffs with documentation reflecting location of their homes and the boundaries of the sanitary protection zones.

On September 12, on the basis of the Supreme Court ruling of August 3, the appeal board of the Almaty City Court cancelled the decision of the Medeu District Court and issued a resolution restoring the enforcement proceedings. The decision of the bailiff K... dated on May 16, 2016, about termination of the enforcement proceedings was cancelled.

On December 27, the bailiff handed the resolution demanding implementation of the Supreme Court ruling of November 27, 2013 to a representative of the Department for Consumer Rights Protection and listed the Department in the Unified Register of Debtors in Enforcement Proceedings.

2017

On February 24, the Department for Consumer Rights Protection filed a statement to the Medeu District Court to appeal the actions of the bailiff K.... The Department requested that the enforcement proceedings be terminated, allegedly, due to the fact that it fulfilled all the claims of the plaintiffs.

On April 4, the judge of the Medeu District Court refused to satisfy the statement, pointing out that there were no grounds for terminating the enforcement proceedings.

On May 3, the Department filed an appeal with the civil affairs board of the Almaty City Court.

Our story is a clear example of how difficult it is to have a court decision to be implemented, even if the decision is made by the Supreme Court.

ENVIRONMENTAL CODE. 10 YEARS OF CONTRADICTIONS AND INEFFICIENCY

Valeriy Krylov,
Forestry specialist,
Almaty, Kazakhstan

Sergey Kuratov,
Ecological Society Green Salvation,
Almaty, Kazakhstan

Ten years ago in January 2007, the Environmental Code of the Republic of Kazakhstan was adopted. The nature protection officials insisted on its development. “The Environmental Code is a set of laws that will reflect all aspects related to environmental protection,” explained the vice minister of environmental protection. It was planned to reform environmental legislation, to bring it closer to the environmental standards of the European Community and international legal standards.¹

With such serious intentions, it was necessary to carefully study all aspects of environmental law, including international law. And such work should have taken a very long time. It should have also been taken into account that in 1997, environmental legislation was already reformed and good laws were adopted, practical implementation of which, in fact, has just begun.

But, alas! The Draft Environmental Code was presented for a review of the Majilis of the Parliament, in accordance with the Government Resolution No.567 dated on June 21, 2006.² Already on June 23, the Draft was introduced to the Majilis. And six months later it came into force! It was adopted hastily; it seemed like the law developers were mainly guided by a rush to report on time. As a result, it turned out to be another inadequate regulatory legal act, which only created a smokescreen that covers the legal chaos reigning in the sphere of environmental protection.

However, in the victorious reports in the first years after adoption of the Code, the opposite was asserted. “The Environmental Code of the Republic of Kazakhstan, adopted on January 9, 2007, introduces significant changes to the environmental protection system adopted in Kazakhstan. The administrative and command approaches, the old system of rationing, the priority of penal sanctions shall be replaced by effective economic levers that are a powerful factor in regulating economic activity in the use and protection of natural resources, prevention of environmental violations, and stimulation of introduction of new technologies. The Environmental Code defines the legal framework for state policy in the field of environmental protection, ensuring a balanced solution

of socio-economic tasks, preserving and restoring the environment, biological diversity, and ensuring environmental security of the country.”³

Even six years later, when the defects and contradictions of this normative legal act became evident, the official point of view did not change. Concept of Transition of the Republic of Kazakhstan to the “Green Economy” states: “To counter the adverse effects of accelerated economic growth, on January 9, 2007, the Government of Kazakhstan adopted a new Environmental Code that regulates all aspects of processes affecting the environment, in particular, emissions of gases and other pollutants into the atmosphere, contains general norms used to control and regulate industrial emissions in Kazakhstan.”⁴

Of course, the Code was not able to reflect “all aspects related to environmental protection.” “Effective economic levers that are a powerful factor in regulating economic activity in the use and protection of natural resources,” have never been created. And the state environmental policy has not even been developed for 25 years of existence of independent Kazakhstan. The Concept of Environmental Security of the Republic of Kazakhstan for 2004-2015, which also had high hopes, was quietly abolished in 2009.⁵ The Concept of Transition of the Republic of Kazakhstan to the “Green Economy” outlined ways to improve the environmental situation, by addressing some of the most acute economic problems.

Hasty poor-quality preparation of the Environmental Code became the main reason for it to be subjected to changes and additions 52 times during the 10 years of its existence. That is, on average more than 5 times a year. And the first change was made already in six months, on July 27, 2007.⁶ And further—more. The most important articles concerning authority of the government, functions of the executive organs of power, environmental impact assessment, environmental assessment, and access to information have undergone major changes. Some “innovations” literally paralyzed the activity of the central authorized bodies of nature protection.

In 2008, the “improvements” were introduced to the Article 48, which regulates the division of powers in conducting the state environmental assessment. Now all types of environmental assessment, except for the most complex types of the I category, are under authority of local executive bodies. They have very extensive powers acting as bodies which order projects, conduct environmental assessment, and approve the projects. The matter has reached the point that local branches of akimats⁷ conduct environmental assessments on the territory of national parks which are the state property!

By the way, the Code does not mention a word about who and how to conduct an environmental assessment for facilities that fall under international conventions. Judging by the actions of akimat officials, they believe that this is

part of their authority. The above named amendments contributed to excessive weakening of the authorized body for environmental protection, dispersion of its functions and their transfer to the local executive bodies.

Already in 2009, the authors of the Fourth National Report of the Republic of Kazakhstan on Biological Diversity warned: “The lack of a clear division of powers between state bodies leads to stalemate situations in a number of cases, when users of natural resources follow regulations of various agencies.”⁸

In 2011, new amendments eliminated the paragraph 13 of the Article 17 of the Environmental Code, which stated that the authorized body in the field of environmental protection “exercises control over activity of local executive bodies on conducting state environmental assessment with a right to recall and annul” it, in case of a violation of the environmental legislation.

A valid question arises: how can the authorized body conduct a unified state policy in the field of environmental protection, which is its duty, if controlling function were taken away from it? Obviously, the main goal of the above-mentioned amendments is to remove an obstacle that binds the “initiatives” of local executive bodies, to untie their hands.

On May 30, 2013, the Decree of the President of the Republic of Kazakhstan No.577 adopted the Concept of Transition of the Republic of Kazakhstan to the “Green Economy.” And in 2014, after numerous transformations, the authorized environmental protection body—the Ministry of Environmental Protection and Water Resources—was liquidated. In the light of the transition to an environmentally friendly economy, this step can not be explained. At the present time, the functions of the environmental protection ministry are distributed among dozens of agencies lead by the Ministry of Energy, which inherited the main authorities of the liquidated body.

The same year, the subparagraph 2 was removed from the paragraph 1 of the Article 47 “Objects of the state environmental assessment.” The removed subparagraph stipulated that «projects of state, sectoral, and regional programs with accompanying materials of environmental impact assessment are subject to mandatory state environmental assessment.”⁹

Thus, large-scale, costly projects that have a significant impact on the environment and public health have been excluded from the environmental assessment. The authors of the amendments were not embarrassed by the fact that this contradicts to the norms of the Article 7 of the Aarhus Convention and impedes its implementation by removing the public from the decision-making process. Nor were they embarrassed that there were contradictions with the paragraph 9 of Article 13 and paragraph 10 of the Article 14 of the Environmental Code. According to these provisions, individuals and public associations have the right to “participate in the process of preparing plans and programs related to the environment.”

In 2015, Article 167 was excluded from the Environmental Code. The paragraph 4 of the article stated that refusal to provide information, providing incomplete or inaccurate information can be appealed, including appeals through a court. The article was removed without any explanation in parallel with the adoption of the law “About Access to Information.” Though, a similar article 18 appeared in the latter. But what was the reason for another emasculation the Environmental Code again?

In 2016, the “wind of change” reached public hearings. The Environmental Code was introduced with the Article 57-2. It lists projects that are to be discussed at the hearings.

Article 57-2 contradicts to the paragraph 1 of the Article 36 and subparagraph 14 of the paragraph 1 of the Article 41 of the Environmental Code. According to the paragraph 1 of the Article 57-2, hearings are held on projects. According to paragraph 1 of the Article 36, “environmental impact assessment is mandatory for any types of economic and other activities,” in other words, including preparation stages of projects. According to the subparagraph 14, paragraph 1, Article 41, impact assessment documentation must include “materials on accounting of the public opinion, in a form of protocols containing conclusions on the results of public discussion of environmental aspects of the proposed activity.” How should designers work now? And how shall the public opinion be accounted at the earliest stage?

Environmental impact assessment provides for accounting of a wider range of factors of influence. Article 39, paragraph 1, of the Environmental Code specifies what types of impacts should be taken into account: direct, indirect, and cumulative. But after the introduced amendments they should, probably, be forgotten. The main thing is projects!

Relying on such “innovations” in the Environmental Code, on June 21, 2016, the Ministry of Energy made amendments to the “Rules for Conducting Public Hearings.”¹⁰ “Public hearings in the form of a survey,” described in the second paragraph of the Rules, is a particularly “outstanding” invention. Now, public hearings can be reduced to a mere formality.

Among the few articles of the Environmental Code that remained unchanged or almost unchanged by the storm of amendments, there are two articles: about rights and responsibilities of natural persons (Article 13) and public associations (Article 14). In ten years, Article 13 was supplemented with one word “requests” (a very significant amendment)! And it took almost ten years to supplement the Article 14, paragraph 1, with a new subparagraph 1-1) based on a provision of the Aarhus Convention!¹¹ This amendment to the Environmental Code recognized the right of public associations to apply to a court in defense of rights, freedoms, and lawful interests of natural and legal persons, including an undefined number of persons. But for the sake of justice it should be noted that the absence of this

amendment did not prevent non-governmental organizations from applying to courts. Both, the old and the new Civil Procedural Codes provide for the rights of citizens and legal persons “to apply to a court for defense of violated or contested legal interests of others or an undefined number of persons.”¹²

Having acknowledged that the public has quite broad spectrum of rights, our legislators did not go further and did not create mechanisms for implementation of the rights. In particular, the above-mentioned articles of the Environmental Code recognize the right of the public “to participate in the decision making process by state bodies on matters related to the environment, in accordance with the procedure established by the legislation of the Republic of Kazakhstan.” It is only not clear, what is this order? The “Rules for Conducting Public Hearings” regulate only the organizational side of public participation, only reveal its opinion. But they do not answer the main question: how is public opinion taken into account in the decision making process? The sad experience of recent years shows that public opinion is almost ignored.

Finally, it is very significant that the Environmental Code is lacking articles that determine the powers of the president and parliamentarians in the field of nature protection. Although, there is the Committee on Ecology and Nature Management in the Majilis of the Parliament, and the Committee on Agrarian Issues, Nature Management, and Development of Rural Areas in the Senate of the Parliament.

As can be seen from the above described facts, the speed of manipulation with the Environmental Code is simply cosmic. And what is expected from project developers, businessmen, and ordinary Kazakhstanis, who are under this legal experiment?

Ten years passed since adoption of the Environmental Code, but again and again, we talk about the old unsolved problems: air pollution, cutting down trees, point construction development, pollution of rivers, unauthorized dumpsites, non-compliance with the procedures of sanitary protection zones of industrial enterprises, violation of the procedures of specially protected natural territories, ignoring public opinion, hiding environmental information, provision of false information by public authorities, and so on.

As before, the country lacks of environmental policy. Therefore, the environmental legislation changes depending on appetites of users of natural resources and, sometimes, under pressure of international institutions, which authority does not allow their demands to be completely ignored.

A lot more can be said about shortcomings of the Environmental Code, but we are afraid that it will take several dozen pages. And description of interpretations at their own will and violations of its norms will require thousands of sheets. Therefore, let us summarize.

The Environmental Code did not live up to its expectations. The average “life expectancy” of such laws in our country is 7-10 years. And if the tendency

of preparation of laws by kneeling to the needs of natural resources exploiters continues, then the Environmental Code is already “at its last gasp.” Who knows if it is going to be replaced by an even more contradictory and less effective legal act?

- 1 Environmental Code Is Planned to Be Adopted in the IV Quarter of 2006, <http://www.zakon.kz/70071-jekologicheskijj-kodeks-planiruetsja.html> (last visited January 9, 2017).
- 2 Paragraph-WWW, http://online.zakon.kz/Document/?doc_id=30052363#pos=11;-270&sdoc_params=text%3D%25d0%25ad%25d0%25ba%25d0%25be%25d0%25bb%25d0%25be%25d0%25b3%25d0%25b8%25d1%2587%25d0%25b5%25d1%2581%25d0%25ba%25d0%25b8%25d0%25b9%2520%25d0%25ba%25d0%25be%25d0%25b4%25d0%25b5%25d0%25ba%25d1%2581%2520%25d0%25b4%25d0%25be%25d1%2581%25d1%258c%25d0%25b5%26mode%3Dindoc%26topic_id%3D30052363%26spos%3D1%26tSynonym%3D1%26tShort%3D1%26tSuffix%3D1&sdoc_pos=0 (last visited January 9, 2017).
- 3 Forth National Report of the Republic of Kazakhstan on Biological Diversity. Ministry of Environmental Protection.—Astana, 2009, pp.37-38, <https://www.cbd.int/doc/world/kz/kz-nr-04-ru.pdf>.
- 4 Concept of Transition of the Republic of Kazakhstan to the “Green Economy.” Adopted by a Decree of the President of the Republic of Kazakhstan No.577 on May 30, 2013.
- 5 Approved by the Order of the President of the Republic of Kazakhstan No.1241 dated on December 3, 2003. Abolished by the Order of the President of the Republic of Kazakhstan No.47 dated on April 13, 2011.
- 6 See the dated of introduction of the amendments to the Environmental Code on the website: Paragraph-WWW, http://online.zakon.kz/Document/?doc_id=30085593&show_di=1.
- 7 Akimat—a local executive organ of power.
- 8 Forth National Report of the Republic of Kazakhstan on Biological Diversity. Ministry of Environmental Protection.—Astana, 2009, p.39, <https://www.cbd.int/doc/world/kz/kz-nr-04-ru.pdf>.
- 9 By the Law of the Republic of Kazakhstan “On Introduction of Amendments to Some Legal Acts of the Republic of Kazakhstan on Bringing Them in Compliance with the System of State Planning of the Republic of Kazakhstan” dated on July 3, 2013, No.124-V, Article 1, paragraph 5.
- 10 Rules of Conducting Public Hearings (with changes and amendments as of June 21, 2016), http://adilet.zan.kz/rus/docs/V070004687_#z6.
- 11 The Article is amended by the subparagraph 1-1), in accordance with the law of the Republic of Kazakhstan No.491-V dated on April 8, 2016.
- 12 Civil Procedural Code of the Republic of Kazakhstan dated on October 31, 2015 (with changes and amendments as of April 18, 2017), Article 8, paragraph 2.
Civil Procedural Code of the Republic of Kazakhstan dated on July 13, 1999, Article 8, paragraph 1.

PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION IN KAZAKHSTAN.

Using the example of the activity of the Ecological Society Green Salvation

Svetlana Spatar,
Ecological Society Green Salvation,
Almaty, Kazakhstan

Legal Grounds for Access to Environmental Information

The right of citizens to access environmental information is enshrined in national legislation: the Constitution, the Environmental Code, the law “About Access to Information,” and other normative legal acts (hereinafter —NLA). And also, this right is stipulated by international treaties, for example, the Aarhus Convention.

Article 20 of the Constitution reads: “Everyone has a right to freely receive and disseminate information by any means not prohibited by law. The list of information constituting the state secrets of the Republic of Kazakhstan is determined by law.”¹

In accordance with the Article 159 of the Environmental Code, “environmental information includes information and data on:

- 1) condition of the environment and its objects;
- 2) factors affecting the environment, including its pollution;
- 3) program, administrative, and other measures that have or may have an impact on the environment;
- 4) environmental standards and environmental requirements for economic and other activities;
- 5) measures that are being planned and implemented for protection of the environment and their financing;
- 6) activities that have or may have an impact on the environment, decision-making process and the results of environmental inspections, including the accounted calculations, analyses, and other information relating to the environment;
- 7) impact of the condition of the environment on health, safety, and living conditions of the population, cultural objects, buildings and structures.”²

Article 163 of the Environmental Code states that “environmental information is publicly accessible,” “access to certain information and data that constitutes publicly accessible environmental information is carried out by providing it at the request of individuals and legal entities, dissemination in the media and special publications, publishing on the Internet, as well as with the use of other publicly available information and communication tools.”

In accordance with the Articles 13 and 14 of the Environmental Code, individuals and public associations have a right to receive timely, complete, and reliable environmental information from state bodies and organizations.

The procedure for access to information is defined by the law “About the Process of Reviewing Appeals from Natural and Legal Persons” of 2007. The Article 8 specifies the time frame for consideration of appeals: “An appeal from a natural and (or) legal person, which does not require obtaining information from other persons, officials, or an on-site inspection, is reviewed within fifteen calendar days.”

The law “About Access to Information”³ was adopted in 2015. The Article 6 of the law states that access to environmental information and information about sanitary and epidemiological situation **is not limited**.

Access to information in Kazakhstan is also regulated by the laws “About State Services,” “About Mass Media,” “About Informatization,” and others.

Internet Resources

It should be noted that more and more Internet resources with environmental information are becoming available. In the recent years, almost all normative legal acts of Kazakhstan can be found on the Internet:

- Information and legal system of normative legal acts “Adilet” (<http://adilet.zan.kz/rus>);
- Internet portal of openly accessible NLA “Electronic Government” (<https://legalacts.egov.kz/>);
- Internet portals of ministries, departments, akimats and other state bodies.

Starting from 2016, draft NLAs are published on the Internet portal “Electronic Government” for public discussion, including discussions online (<https://legalacts.egov.kz/application/list/1/1301/1>).

The public got more opportunities to send requests. The requests can still be sent by mail or delivered to the office. Another method is to post “an electronic appeal” to blog platforms of leaders of state bodies, through the web portal “Electronic Government” (<https://egov.kz>).

Many state bodies have set up their pages in social networks—Facebook, Instagram.

Written requests take the longest time, but are still the most reliable way to obtain environmental information. Written replies are documents that can be presented even in court, in the event of disputes or conflict situations. However, one must take into account that information is often incomplete and low-quality.

Subjects of Requests

The main subjects of the requests of the Ecological Society Green Salvation (hereinafter—ES) are related to:

- environmental conditions in populated areas (air, water, soil, and vegetation);
- health and environmental safety of people;
- impact of industrial enterprises on the environment;
- condition of specially protected natural territories;
- implementation of projects, including those directly affecting specially protected natural territories;
- clarification of environmental legislation;
- violations of environmental legislation;
- actions of state bodies in solving certain environmental problems;
- public participation in the decision-making process on issues relating to the environment, etc.

In accordance with the Aarhus Convention, all this information must be accessible!

Statistics of Requests for Environmental Information

On an average, the organization sends over a hundred requests to state bodies annually. The table below presents data on the number of requests of the Ecological Society Green Salvation and responses to them for the last 4 years.

Year	Number of requests	Received replies	Did not receive replies	Number of replies containing low-quality incomplete information
2013	136	99	37	71
%	100	73	27	72
2014	189	126	63	75
%	100	67	33	60
2015	252	166	86	80
%	100	66	34	48
2016	125	85	40	46
%	100	68	32	54

By analysing the answers to our organization's requests for 2 years (2015 and 2016), we can name organizations that most often do not respond to public inquiries. The first place belongs to the Republican State Enterprise "Kazhydromet," and the second and third places were divided by "guardians of

order”—the Specialized Environmental Prosecutor’s Office of Almaty and the Department of Internal Affairs of Almaty.

No.	State bodies filed with requests (subjects of requests)	% of requests of the ES which were not answered
1	“Kazhydromet” (requests about quality of environment in the city of Almaty)	80
2	Specialized Environmental Prosecutor’s Office of Almaty (environmental violations)	80
3	Department of Internal Affairs of Almaty (environmental violations)	58
4	Ile-Alatau State National Natural Park (conditions of ecosystems of the national park and legal violations on its territory)	49
5	Committee for Environmental Regulation, Control, and State Inspection in the Oil and Gas Sector of the Ministry of Energy (environmental legislation)	33
6	Forestry and Wildlife Committee of the Ministry of Agriculture (about activity of national parks)	26
7	Akimat of the City of Almaty (environmental situation in the city)	25

On a separate note, it should be mentioned that deputies of the Senate and Majilis of the Parliament and Maslikhat of Almaty often do not respond to our requests. Generally, representatives of private business, both small and large, ignore public inquiries. Article 164 of the Environmental Code obliges not only public authorities, but also other organizations to provide environmental information.

Another problem is poor access to full and timely information on the environmental situation in populated areas of Kazakhstan. The geographical portal of “Kazgidromet” stations for atmospheric quality control, where operational information is to be published, does not always work correctly (<http://atmosfera.kz/>). Data from most points in some cities where observations are being conducted, including Astana, are absent.

In cases when state officials refused to provide information or did not respond to the letters at all, Green Salvation was forced to appeal to a court.

For more information on judicial practice of the organization, see the material “Access to Justice in Environmental Matters,” published in this Herald, page 45.

Conclusions

Based on the experience of Green Salvation, the following conclusions can be made.

1. Sometimes, state officials interpret provisions of the national legislation at their own will, for example, the term “confidential information.”

2. Internet resources of state bodies do not always have enough information to make decisions, so the public has to prepare a large number of requests.

3. Responses of state authorities often do not contain exhaustive information, which forces the public to send additional requests.

4. Appeals to courts sometimes allow obtaining information, but there is no guarantee that the information is complete and of a good quality. Additional time needed to appeal to courts delays the process of obtaining information, which hinders prompt decision-making and makes the work of the organization more difficult.

In 2015, after an official visit to Kazakhstan, the UN special rapporteur on human rights, Baskut Tunchak, concluded that there is a need to improve access to information in the country, which is still relevant: “Information is fundamental to guarantee numerous human rights, and a foundation for any regime to manage hazardous substances and wastes. It is necessary to enable free, active and meaningful public participation; to understand the severity of impacts on human rights by hazardous substances; and to realize the right to an effective remedy. In my view, in Kazakhstan there appears to be a systematic and wide-spread deficiency in: (1) generating information on pollution in the environment that threatens human rights, in particular the right to health; and (2) enabling public access to information in a manner that allows people to defend their rights.”⁴

1 Constitution of the Republic of Kazakhstan, <http://adilet.zan.kz/rus/docs/K950001000>.

2 Environmental Code of the Republic of Kazakhstan, <http://adilet.zan.kz/rus/docs/K070000212>.

3 Law of the Republic of Kazakhstan “About Access to Information” dated on November 16, 2015, No.401-V ЗРК, <http://adilet.zan.kz/rus/docs/Z1500000401>.

4 UN Special Rapporteur on Human Rights & Toxics. End of Visit Statement—Kazakhstan 2015, <http://www.srtoxics.org/2015/03/end-of-visit-statement-kazakhstan-26-march-8-april-2015>.

HOW TO PRESERVE HERITAGE OF THE PAST?

Valeriy Krylov,
Forestry specialist,
Almaty, Kazakhstan

*The last word in ignorance is the man who says
of an animal or plant: "What good is it?"*

*—Aldo Leopold, American writer,
ecologist, environmental advocate*

Walking through Almaty streets and visiting old city parks, you may notice a high number of large stumps and drying trees. It may make you wonder—why are the parks and streets greenery which were created by our ancestors for our own good, now growing thinner and getting a jaded look right in front of our eyes. Why do businessmen first care about cutting trees in front of their “properties” to open a field of view or build a parking lot? Do they even think about the harm they cause to the nature and the city residents? Why do the city officials pay no attention to this outrage? Why do we treat the heritage of the past so ungratefully?! Involuntarily, you start looking for answers to these questions.

All of this is clearly demonstrated on the example of Baum Grove which was created for us by the ancestors.

First trees and shrubs were planted on the territory of the currently existing grove in 1868, i.e. only 14 years after establishing the fortress Vernoe (1854). Governor G.A.Kolpakovskiy personally followed the plantings. In 1877, an oblast forestry officer, forest scientist Eduard Ottonovitch Baum became in charge of the grove. In 1892, he asked to officially allocate the land for the grove which in different times was called Alferovskaya, Vernenskaya, Kazennaya, Kazachya, Razboynichya. “The land occupied by the grove was allocated in 1899 with drawing the borders on the plan and putting up the signs.” Area of the plot was 152 dessiatinas (about 166 hectares).¹ Baum re-designed the old plantings, splitting the territory by a web of straight alleys into squares (blocks). Plantings content was improved by introduction of more valuable species—oak, ash-tree, and linden. Plantings and seeds were brought from the European part and Siberia, but a large percentage of the plantings was represented by the local tree species—elm and English elm.

Simultaneously, the city streets were planted with greenery. Already in 1867, rules of development of the new city stipulated: “Next to every house, seven feet away, it is intended to plant trees in two rows from each side of the street, with a 14 feet space between them which will serve as a sidewalk for

pedestrians.”² Valuable species were also planted—oak, linden, birch, pine, and fruit trees, some of which are still growing.

These successes were noted by the famous botanist A.Regel who visited Verny in 1876: “The city is decorated by various tree plantings everywhere, even in the continually appearing new city districts.”³

From the beginning of 1900s, every spring in Semirechye people celebrated the “Festival of Tree Planting” where free saplings were provided. For example, on this day in 1902, volunteers planted more than fifteen hundred young trees of different kinds along Malaya Almatinka River, the last of those trees, probably, disappeared in the recent years. The grove created with the first-hand participation of E.O.Baum and called in his honour, represents a pitiful sight nowadays.

What happened to the grove during this relatively short period of its existence? Why did it reach such a sad state?

In the first third of the twentieth century, the grove existed as a forest-park with a limited influence of the external factors on the vegetation. The grove was the largest forested area in the city of Almaty. Huge mass of greenery stretched for 3.5 km in length, in some areas reaching a kilometre in width. As the city infrastructure developed, negative impact of the external factors on the grove started to gradually increase. In 1930s, the grove was pushed against from the east side by a railroad built to the station Almaty-2.

In 1950-60, due to development of Seyfullin Avenue to the north, anthropogenic impact on the west side of the grove started to increase.

Even a bigger negative impact on the condition of the trees was brought by a construction of the Big Almaty Channel in 1980s. The very southern part of the grove was split off by the channel; a number of trees was removed during the construction. Thus, the area of the grove shrunk to 130 hectares. But the most important is that the construction of the channel destroyed the existed irrigation system.

Partial destruction of irrigation ditches lead to a change in the ground water level, which abruptly worsened the watering cycle of the trees. It caused water-logging in some areas, and water deficiency in others. These changes caused hundreds of trees to die, including oaks and other valuable species. Beautiful oak alley, which used to be a cultivation standard of these long-lived species, lost its attractiveness.

The grove area became smaller compare to the far gone years of the nineteenth century, when population of Verny was only a few thousand people. Today more than 1.5 million people live in Almaty; 800 thousand cars poison the air with harmful emissions and consume large amounts of oxygen every day. Oxygen content in the city air decreased significantly. One of the reasons causing this is tree cuttings in the city and its vicinities, including mountain forests accurately defined as “the city’s lungs.” People grew the grove, in order

to create favourable conditions for the city residents. And today we observe how this marvellous creation of collaborative work of men and nature is dying.

Before 2001, Baum Grove was under authority of the akimat (the city mayor's office). Specifically that is why in 2000, despite of the requirements of the current law "About Specially Protected Natural Territories," it was proposed to give the grove a status of a specially protected territory of local level—landscape park "Baum Grove." Scientific justification and feasibility study were developed. In accordance with the decision of the akimat dated on March 14, 2000, No.249, project design and organization works were assigned to the State Municipal Enterprise "Almatyecologostroy."

Further on, the situation became even more complicated when after the Decree of the Government dated on June 27, 2001; No.877 "About State Natural Reserves and Monuments of the Country Level," the "Baum Grove" was included into the **"List of the State Monuments of Nature of National Level."** The city residents were not involved in discussion of this decision.

Master plan of the city of Almaty adopted by the Decree of the Government dated on December 19, 2002, No.1330, denotes that "territories of the natural complex include: forest and **forest-park zones (Baum Grove).**"

It should be noted that in accordance with the active at that time law "About Specially Protected Natural Territories" dated on July 15, 1997, No.162, **a state monument of nature** is a "specially protected natural **territory with a regimen of a reserve** designed to conserve individual objects of the state natural reserve fund in their natural condition" (Article 43, paragraph 1).

Article 45 of the same law defines the regimen of its utilization:

"1. **Any activity violating the natural condition and integrity** of the state monuments of nature **is prohibited.**

2. State monuments of nature can be utilized in a defined order in scientific, cultural and educational purposes."

In accordance with the paragraph 1, Article 35, a regimen of a reserve had to be established on the territory of monuments of nature, which beside the above mentioned limitations prohibited **"citizens to be on its territory without a special permission** and outside of areas allocated for visiting." But it was widely known that the grove was visited by hundreds and thousands of people daily, different attractions were set-up there. It was reported in numerous publications, press, and Internet.

Thus, an unsolvable contradiction was created: **how could one announce the grove to be a monument of nature at the existing way of its utilization which had been forming for dozens of years? In this situation, the adopted decision practically could not be implemented.**

By calling the grove a monument of nature, **the officials started to violate the requirements of the law themselves.** "Almatyecologostroy" signed an

agreement with the Republic State Enterprise “Kazgiproleskhoz” dated on April 30, 2003, about development of a “Draft Project of Reconstruction of Forest Plantings of the ‘Baum Grove’.” And what about the regimen of a reserve?

In the very beginning of the survey works, the project developer drew attention of the “Almatyecologostroy” to the fact that the old trees cuttings performed since 2000 (400 trees per year) contradicts to the newly established status of the “Baum Grove.” In the project it was noted: “At the technical meeting on May 30, 2003, ...it was decided: “To address the Government of the RK (in accordance with the established procedure) with a petition about changing the status of the ‘Baum Grove’ in order to receive a permission to conduct activities of reconstruction of the overripe woods.” Further it was said: “Author of the project has to state that at the time of completion of the project survey works, no changes to the status of the ‘Baum Grove’ were made.”

Unsatisfactory condition of trees in the grove which was reported numerous times in the press and Internet was confirmed by the survey works conducted according to the above mentioned agreement. During a detailed examination of a part of the grove measured in 43 hectares where the reconstruction was planned to be started, poor condition and, in some places, unsatisfactory condition of trees was identified. As a result of the inventory, 7,636 trees were taken into account. Among them, 5,787 trees reached the stage of natural aging and needed to be cut and replaced by new ones.

The process of intensive dying out of a large number of trees is explained not only by natural aging, but also by rotting of the root system as a result of flooding with polluted waste water in some places and lack of moisture elsewhere. There was no natural equivalent renewal of plantings.

The developed project for reconstruction of the grove site was not implemented due to the fact that it contradicted the established nature protection regimen on the given territory. Nobody took measures to change the legal status of the grove.

In 2008, in accordance with the order of the Forestry and Game Committee of the Ministry of Agriculture dated on April 21, 2008, No.107, “Baum Grove” became a part of the Ile-Alatau State National Natural Park (hereafter—Ile-Alatau SNNP).

In order to carry out activities on this territory, which, in view of the reserve regimen, practically came down to protection, funding and staff units were allocated. But the park’s administration was not able to limit visits of the grove by the population. For many decades the grove has been a favourite recreation spot for the townspeople.

Given the unsatisfactory condition of the grove and the need to carry out their assigned duties, the leadership of the Ile-Alatau SNNP asked the higher organization for explanations. On January 8, 2009, the Forestry and Game

Committee sent the park a reply No.25-02-09-29/29 with such a “meaningful” content that some of its fragments require citation:

“According to the Resolution of the Government of the Republic of Kazakhstan dated on November 10, 2006, No.1074, ‘On Approval of the List of Specially Protected Natural Territories of National Level,’ the state monument of nature ‘Baum Grove’ is a specially protected natural area.

The Committee considers the change in its legal status inadvisable.”

Firstly, the Committee apparently forgot about the Resolution of the Government of June 27, 2001, No.877, according to which the “Baum Grove” was included into the “List of the State Monuments of Nature of National Level.” Secondly, there was no answer to the main question on how the administration of the national park should work under the established status of the grove.

Instead, the Committee summarized the content of the Articles 29 and 30 of the 2006 law “About Specially Protected Natural Territories.” They talk about safeguarding, protection, and restoration of the state natural reserve fund in general, **and not specifically of monuments of nature with a regimen of a reserve.**

Further in the letter, it is indicated:

“The Committee plans to develop a project for restoration and conservation of the monument of nature ‘Baum Grove’ in 2009-2011.

Prior to approval of the project, maintenance activities for the monument of nature should be carried out within the allocated budget and the national park’s own funds in agreement with the Committee.”

What a “good” advice was given by the authorized body! If you follow their instructions, you will violate the law. If you do not follow the instructions of the leadership, you will be punished accordingly. The choice is not great, but it makes the nature and people to suffer.

In December 2015, information on the further development of the “paper” reconstruction of the grove appeared in the publication of Aleksey Azarov⁴ “The Legacy of Eduard Baum in Almaty.”

In 2009, the Forestry and Game Committee, a head organ for all national parks, “held a tender for the project of restoration and reconstruction of the Baum Grove. The tender was won by the company named ‘Centre for Remote Sensing and Geoinformation Systems ‘Terra’.’ In 2009-2011, this company developed a master plan for development of infrastructure of the national monument of nature of the countrywide significance ‘Baum Grove’.”

Representative of “Terra,” Tatyana Utyasheva in her interview for radio “Azattyk” said that an inventory and a comprehensive evaluation of the current ecological conditions of the grove were performed. Specialists came to a conclusion that “as a result of natural aging and lack of maintenance, forest protection and forest restoration works, trees and shrubs of the grove reached

an emergency state and represent a threat to the constantly growing number of visitors. The project authors emphasized that if the project is not implemented, the unique ecosystem of the grove will collapse...

The project is designed for 14 years. According to the project, 80 percent of the existing trees (12537.52 cubic meters of wood) are subjected to cutting, as they are either infected by pests or are very old. It was planned to plant 17 types of landscape groups, alleys of 7,122 trees and shrubs, as well as many other works for cleaning and improving the territory of the grove. At the time when the development of the project was completed (2011), the cost of its implementation was a little more than one billion 110 million tenge.” Under the project, it was planned to clean the Moika creek flowing through the grove and beautify the creek banks with a natural decorative stone. For two years this work was conducted by the akimat.

The question of who should manage the grove has been discussed for many years. The Baum Grove is managed by the Aksai Branch of the Ile-Alatau National Park. But **no funds are allocated to the park for implementation of the projects, so the park administration has only been performing protection of the grove.** Under the former akim of Almaty, it was intended to return the grove to the municipal property, and the new akim B.Baibek confirmed this intention. But this did not happen in 2016.

Author Skyfall of Yvision blogging platform, who publishes a lot of critical articles about the condition of the greenery fund of Almaty, at the request of a reporter of radio “Azattyk” to comment on the situation, said: “Initially, before the Soviet Union collapsed, the grove area was 140 hectares, but by 2006, it was only 130. The area would continue to decrease, fortunately it had been taken out of the municipal property and become a part of a specially protected natural territory... Today the media reports that the grove should be returned to the municipal property, but if this happens, it will be much worse for the grove.”⁵

In Maya Tenizbaeva’s publication appeared in May 2016, “The Baum Grove Should Become a Place for Active Recreation of Citizens—Akim of the Turksib District of Almaty,”⁶ it is reported that negotiations about transferring the grove from the Forestry Committee to the city of Almaty are being conducted at the governmental level.

“Today at a meeting of the public council, the akim of the Turksib district of Almaty, Vladimir Ustyugov, said that, possibly, in the next year, the Baum Grove will pass under the control of the city. And while the grove is under the jurisdiction of the Ministry of Agriculture, the district has no right to engage in improvement of the territory...

Our hands are tied; we cannot cut down dead trees, clean dead-wood. But we help clean up the territory and maintain an overall order. We allocate machinery.

In April, we conducted a clean-up with a participation of the akim of Almaty. The territory was straightened up; trees were planted, so I do not think that everything is so bad there. The only thing, the Baum Grove must pass to the city. This issue has long been raised.”

From these publications, it is clear that development of deliberately impossible projects of reconstruction of the grove continues. The regimen of a reserve, established for the grove by law, does not allow these projects to be implemented. And it is simply absurd to cut 80 percent of the plantings on the territory of a monument of nature “Baum Grove.”

Everyone wants to get the grove under their jurisdiction, not solving the main problem—clarifying its status, so that it can be reconstructed and turned into “a zone for active recreation of citizens, with walking and bicycle paths, children’s and sports fields. Even may be with allocated areas for animals.”⁷

It should be noted that even now, despite of its unsatisfactory condition, wild animals live in the grove.

At the established regimen of a reserve on the given territory, proposals for reconstruction and placement of “animal areas” on its territory are clearly illegal.

Proposals to transfer the grove to municipal ownership are even more incompetent, since in accordance with the paragraph 6 of the Article 14 of the Law of the Republic of Kazakhstan “About Specially Protected Natural Territories,” transfer of specially protected natural territories from the category of “national level” into the category of “local level” is not allowed.

The questions in the beginning of this material have long been answered. The same attitude towards our “green friends,” which we are facing right now, took place both in Europe and in North America back in the first half of the nineteenth century! And today, we are just repeating mistakes of others.

How did the developed countries manage to change the situation?

First, by developing and applying an effective legislation. We also need to bring the environmental legislation of the country in line with the requirements of international conventions ratified by the Republic of Kazakhstan, develop a state policy in the field of protection and development of specially protected natural territories.⁸

In the conceptual apparatus of the Convention for the Protection of the World Cultural and Natural Heritage, there is a definition of “cultural landscape.” This is an object of cultural heritage, representing “the joint creations of man and nature,” identified in the Article 1 of the Convention. This status is quite suitable for the Central Park of Culture and Recreation, and the Park Named after the 28 Panfilov Guardsmen in Almaty. Kazakhstan ratified the Convention 23 years ago, in 1994!

Secondly, with each passing year, the growing environmental ignorance of ordinary citizens, businessmen, and officials becomes more and more obvious. An example with the “Baum Grove” and the law “About Specially Protected Natural Territories” is a good confirmation of this. In the fight against this phenomenon, success is achieved not only by legal measures: fines, penalties, bans. It is necessary to stop empty talk about environmental education and awareness. It is time to take the most effective measures for their implementation in all educational and cultural awareness institutions. Developed countries, particularly, follow this path.

There is only a hope that legislators will make a decision allowing to preserve and restore the green spaces created by our ancestors for the benefit of future generations, and the city residents will be able to enjoy this benefit with dignity.

1 Parks of the City of Almaty of 1868-1916. Collection of archive materials and documents.—Almaty, 2005, pp.78-79.

2 Lukhtanov A.G. City of Verny and Semirechye Oblast.—Almaty, 2014, p.223.

3 Same as above.

4 A.Azarov. Heritage of Eduard Baum in Almaty, <http://rus.azattyq.org/a/baum-rosha-almaty/27454704.html> (last visited April 24, 2017).

5 Same as above.

6 M.Tenizbayeva. Baum Grove Must Become a Place of Active Recreation of the City Residents—Akim of Turksib District of Almaty, <https://informburo.kz/novosti/roshcha-bauma-dolzha-stat-mestom-aktivnogo-otdyha-gorozhan-akim-turksibskogo-rayona-almaty.html> (last visited April 24, 2017).

7 Same as above.

8 Considering that since the second half of 2016, in the Majilis of the Parliament of the Republic of Kazakhstan, there is a discussion of the draft law of the Republic of Kazakhstan “On Introducing Changes and Amendments to Some Legislative Acts of the Republic of Kazakhstan on Flora and Fauna,” including the Law of the Republic of Kazakhstan “About Specially Protected Natural Territories,” the Ecological Society Green Salvation prepared comments and suggestions to these normative legal acts.

The full text of the comments can be found on the website of the Ecological Society Green Salvation in the article “Why Is the Law Bad and Why Does it Not Protect National Parks?”, <http://esgrs.org/?p=13769>.

Also see the photo and video attachment to the comments—a slide-film “National Parks Are in Danger,” <https://www.youtube.com/watch?v=OogV7xJvLnk>.

On October 26, 2016, these comments were sent to the President, Parliament, Prime Minister, Minister of Agriculture, and Forestry and Wildlife Committee.

Why Is the Law Bad and Why Doesn't It Protect National Parks?

Valeriy Krylov,
Forestry specialist,
Almaty, Kazakhstan

Sergey Kuratov,
Ecological Society Green Salvation,
Almaty, Kazakhstan

Support of ecological balance by organization of specially protected territories of various types and seportology¹ as a science, which researches and optimizes these processes, are turning into socially and economically significant tool of survival of the humanity.

*—N.Reymers, Soviet zoologist, ecologist,
one of the pioneers in creation
of reserved natural areas in the USSR*

Let us begin by noting that our country which announced a transition to the “green economy,” has neither environmental policy, nor biological diversity preservation policy, nor rational utilization of water resources policy, nor tourism development policy. But it has unlimited ambitions.

At this, the environmental legislation does not contain clear and strict legal guidelines, and it is poorly observed. Executive authorities give in to “influential” nature-exploiting based businesses; courts worship the executive authorities. As a result, the natural environment is significantly polluted and deteriorated.

Primitive market fundamentalists predict invasion of millions of tourists, which come to our cities and towns bringing desired billions in profits. The market economy will blossom; “Kazakhstan dream” will come true. Alas, the devisers of the projects forget that market must be, first of all, based on clear laws, which are not only written, but also observed.

In our country, the word “law” is not favoured; the phrase “observance of laws” is despised. Mentality is on the first place. And if the mentality contradicts the law, then the law is either not observed, or it is changed. Frequency of changes of laws is in direct proportion with the speed of mental transformations of “influential” natural-resources based business owners, and in reverse

proportion with the amount of profits. If profits decrease, expect changes which shall compensate the loss!

The law “About Specially Protected Natural Territories” (hereafter—SPNT) is not an exception. It is an annoying obstacle on the way of commercial development of the last untouched natural resources: mountain forests, river valleys, lake shores, valuable animal and plant species.

Since the law cannot be fully ignored yet, a method of introducing amendments into the existing legislation is used. For the ten years of its existence, the law about SPNT was amended 16 times! In June 2016, another draft law “About Introduction of Amendments to Some Legal Acts of the Republic of Kazakhstan Regarding Flora and Fauna” was submitted to the Majilis of the Parliament of the Republic of Kazakhstan. Purpose of the project is to further “improve” the legislation, including the law “About Specially Protected Natural Territories.” And in this case, the classic question: “Who is benefitting from that?” has an absolutely clear answer. Those, who receive profits from developing (read destruction) of the untouched pieces of nature left.

Who Does the Natural Parks Belong to?

As you may know, any activity requires land. And who does it belong to in national parks? At first, the question seems to be absurd. The law clearly indicates that “the lands of specially protected natural territories, and also land plots of other categories used for sites of the state nature reserve fund, are the state property and not subjected to alienation.”² Further it is emphasized that “requisitioning of lands of specially protected natural territories is not allowed.” Nature reserves and national parks are SPNT of the state level,³ they belong to the government⁴ and their management is assigned to the Forestry and Wildlife Committee (hereafter—Committee).⁵

But this is only at first glance! In the paragraph 2, Article 23, it is said that “transferring lands of specially protected natural territories (into other categories of lands—Editor’s note) is not permitted, in the exception of cases when transferring into lands of reserve for construction and operation of tourisms facilities...” and other. In other words, parts of a national park can be transferred from the most valuable category into less valuable lands which do not even have an owner.⁶ And since there is no owner, they can be privatized by a decision of the local executive organs! But this contradicts to another article of the law about SPNT, according to which “transferring specially protected natural territories from the category of the ‘state level’ into the category of the ‘local level’ is not permitted.”⁷

This is a great illustration to the well-known aphorism: “If it is prohibited, but you really want to, then you can!” Although, the law makes a stipulation. Not

all parts can be transferred, but only those with established limited economic activity order.⁸ But this will be discussed below.

So, who is the owner of the lands in national parks?

Leasehold Privatization

The simplest form of privatization of lands of national parks is lease. Although, specialists of the Committee can swear on the Environmental Code that lease is not allowed by the law of SPNT, and bring an “iron” argument: “You do not understand anything!” Indeed, there is not a term “lease” in the legislation. More precisely, there was one but after another “improvement” of the law in 2012, it was replaced by an expression short-term and long term “utilization.”⁹

In order to clarify this question, let us take a look at the Land Code. In the paragraphs 1 and 2 of the Article 35, it is said: “1. A land plot can be provided to citizens and legal persons on the basis of temporarily fee-based land use (lease) or on the basis of temporarily land use free of charge. 2...Right of temporarily fee-based land use (lease) can be short-term (under 5 years) and long-term (5 to 49 years).” So, fee-based utilization is, indeed, called lease. Therefore, the awkward replacement of the term “lease” by “utilization” in the law about SPNT does not change the essence of a transaction.

Officially, letting lands into lease-utilization is taking place for organization of tourism and recreational activity by natural and legal persons, as long as they have a license on tour-operation activity, for example, for 49 years.¹⁰ In this case, they use a method known from the times of Hodja Nasreddin. In 49 years, either the lands of the park will be totally plundered, or the laws will be changed. And while the lease is active, the lease holder is a factual private owner!

Monuments of Palatial Architecture in National Parks

Of course, the lands are leased not to admire flowers and butterflies. Lease holders behave like “invaders.” National parks are getting cluttered with fences, dumpsites, parking lots, shish kebab houses... Palaces and mansions are growing like mushrooms. Automatically, a question arises: is it possible that the lease holders like tourists so much that they construct these “masterpieces” of palatial architecture only to win customers from their competitors?

At a closer look, it becomes obvious that there is nothing to do with tourists here. The palaces are built for private purposes. Seems like these lease holders are the ones who initiated the amendments into the law about SPNT which allowed lease and construction in national parks. For an official excuse of the “palatial movement,” its founder-fathers introduced into the law a special Article 46-1 “Construction Development on the Lands of State National Natural Parks

Given for Use for Tourism and Recreational Activity.” The article was filled with legal fog, in order to cover blunt greedy interests of the developers with a veil of lawfulness and public benefit. Dry legal language states that construction on sites of national parks is planned to be performed on the basis of a permit issued by an authorized organ (what a sinecure!) and project documentation developed in accordance with a design agreed with the authority.

After expiration of a lease period, it can be renewed. Natural and legal persons are responsible for ensuring integrity of the sites of the state natural reserve fund and for protection of the environment.

And the last paragraph of the Article 46-1 sounds almost like a motto of the Great French Revolution: “Dismantle and removal of constructed buildings from the land plots (in case, if a lease period is over and it was not renewed—Editor’s note) must be performed by natural and legal persons.” Peace to parks, war to palaces! How will this requirement of the law be enforced? After all, the palaces are built not to be demolished. This is another legal obscurity.

Situation is also worsened by the fact that due to a low-quality construction, some “palaces” are falling apart by themselves, “adorning” national parks with far from picturesque ruins. Their creators—land tenants—are not in a hurry to dismantle and remove the ruins. Nobody rushes to ensure integrity of sites of the state natural reserve fund and protect the environment. They are, probably, waiting for expiration of the 49-year period!

Limited Economic Activity with Unlimited Consequences

Another invention of our law makers is a term “limited economic activity” on the territories of national parks which is explained in the Article 47 of the law about SPNT. Certainly, servicing tourists and performing of nature protection activities is already considered to be economic activity, and it is necessary. But let us take a closer look at the peculiarities of understanding of this term by the authors of the law.

A lot and a lot is allowed within the frames of the limited economic activity! Incidental forest utilization, limited livestock grazing (200, 1000, 10000 heads?), maral¹¹ raising, hay stocking, amateur picking of mushrooms, fruits and berries, performing sanitary forest cuttings, maintenance cuttings (at the exception of passage cuttings), processing the lumber, nomadic bee-keeping using mobile beehives. Additionally, construction of water pipelines, hydro power stations, cable roads, electric power lines (including high voltage lines), parking lots, and road barriers. A large number of “freedoms” brings large number of violations. Construction in reserved areas or national parks, construction on river banks in a way that visitors are unable to approach the water for kilometres, auto races along mountain river beds, private helicopter rides over the Almaty reserve, hard-rock rumbling in the Valley of Castles in Charyn Canyon...

As of 2012, 51.9% of lands of the Ile-Alatau National Park were re-zoned for limited economic activity¹² and can be leased out. It feels like it should be renamed into a zone of unlimited economic activity. In other words, more than a half of the territory of the national park can be lost for the overwhelming majority of the wild animals. Here you have the limited economic activity! Are things better in other national parks?

Conventions that We Trample on!

International agreements are not favoured in our country, as well as the national legislation. Often, one can hear officials say: “Why do you keep talking about agreements and conventions?” In the first years of independence, the conventions were signed, probably, without a thought that the international obligations will have to be complied with, and not only provide a chance to travel abroad with missions.

Paragraph 4 of the Article 2 of the law about SPNT stipulates that “if an international agreement ratified by the Republic of Kazakhstan, establishes rules that are different from the ones contained in the present law, than the rules of the international agreement are applied.” But that is the extent of the “application” of the international law, despite of the fact, that its priority is announced by the Constitution of the Republic of Kazakhstan (Article 4, paragraph 3), Environmental Code (Article 2, paragraph 2), Forestry Code (Article 1, paragraph 3), Civil Procedural Code (Article 2, paragraph 3), and other laws.

Which requirements of the international law are missing in the law about SPNT? It does not determine at all the status of SPNT included in the UNESCO World Heritage List, List of Wetlands of International Importance, and other territories subjected to management under the international agreements ratified by the Republic of Kazakhstan.¹³ That means that all of the above mentioned metamorphoses with the land of national parks can happen on territories of SPNT which are included, for example, in the World Heritage List. Why not to lease for 49 years a piece of a national park, included into the List, and open a restaurant with a poetical name “World Heritage?” Sounds grand!

In the Ile-Alatau National Park, included in the Tentative List of sites of the Republic of Kazakhstan which are to be nominated into the World Heritage List,¹⁴ land lease is already a norm! Will it create an insurmountable obstacle for including the park into the World Heritage List? In other words, our “influential” developers of natural resources prefer receiving profits right now and right here, but not to invest into some mythical site of the world heritage.

In the law about SPNT, the home-country legal experience is not taken into account either. The law “About Protection and Utilization of Sites of Historical and Cultural Heritage” in the country is in effect since 1992!¹⁵ With a purpose

of an effective accounting and protection, monuments of history and culture are divided into three categories: international, country-wide, and local importance. Monuments of international importance particularly contain sites included into the UNESCO List of World Cultural and Natural Heritage. Why wasn't this experience used during more than 20 years?!

In the law about SPNT, the provisions of the Convention on Biological Diversity are not implemented either. In particular, no attention is given to the fact that “the fundamental requirement for the conservation of biological diversity is the in-situ conservation of ecosystems **and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings.**”¹⁶ These gaps in the law create favourable conditions for some amazing initiatives by our “influential” developers of natural resources. For example, somebody liked a piece of land where “red book” plants grow. They suggest to transplant the plants into “reservations.” And it doesn't matter that natural ecological systems will be destroyed along the way. There will always be some scientists who are ready to give a “scientific” justification of the blunt violation of the law.

About preservation of habitats of “red book” plants is only mentioned in the Article 339 of the Criminal Code, which states: “Illegal procuring, acquiring, keeping, selling, importing, exporting, shipping, transporting, or destroying of rare and threatened species of plants and animals, their parts and derivatives, ... as well as **destruction of their habitats** are punished.” At least, here it was not forgotten!

But what a rich soil is created by the above listed black holes in the law for various speculations on the topic of development of ecological tourism!

Life Saving “Energy of Inaction”

Why is it that at this legal anarchy, the national parks haven't disappeared yet in Kazakhstan? Because beaten up roads, destroyed bridges, lack of maps and on-site signs, illegal appropriation of lands, omnipresent road barriers, paradoxically, sometimes can be helpful.

Experience of residents of the town of Glupov¹⁷ comes to mind. Indeed, they were the first ones to apply the “energy of inaction.” In our case, the “energy of action” of “influential” developers of natural resources “was opposed with a great resourcefulness to the energy of inaction” of officials. The energy of action wins for now, because developers of natural resources learnt to “tame” officials.

But the tendency is growing. Some mountain gorges, where massive tourism used to blossom in the soviet times, nowadays are totally forgotten and abandoned. According to a competent opinion of scientists, even snow leopards returned there.

What Is Necessary to Be Changed in the Law?

“Effective protection of the environment requires clear and strict legal regulations.”¹⁸ This written truth disliked by our “influential” developers of

natural resources and corrupted officials, gives an exhaustive response to the raised question. Guided by logic of a pig under an oak,¹⁹ they only think about what they want to eat. They are not interested about ecological, socio-economic, scientific, and cultural benefits received by the society from having untouched natural territories.

Hundreds of amendments were introduced into the law about SPNT only to gain instant profits. Will such a law work at all? They are not worried about that either, it is not important to them. What is important to them is that their interests are met.

More numerous confirmations of discrepancies between the law about SPNT and the requirements of the international and national legislation can be described. In its current content, the law about SPNT is more of a monument to lawlessness, destruction of SPNT and the state system of nature protection.

In order to really improve the situation, significant changes are needed to be introduced into the legislation with the account of requirements of the international law, and not just a legal make-up.

It is necessary to develop a state policy in the area of protection and development of SPNT, in accordance with the nature protection conventions. Give it a status of a regulatory legal act which is obligatory for implementation by all state organs and other natural and legal persons.

Introduce into the law provisions about a special status of SPNT and other territories, where the international agreements ratified by the Republic of Kazakhstan are applicable. For example, sites included into the UNESCO World Heritage List or the List of Wetlands of International Importance.

Develop a provision about protection of ecosystems, habitats, and conservation of viable populations of species in their natural surroundings.

It is necessary to remove all external landowners outside of the borders of SPNT of the state level, ban land lease²⁰.

And the most important. The meaning “national parks” itself implies not only that they belong to the nation, but also that wider public has a right and must participate in their creation, management, protection, and utilization for well-being of the presently living and future generations, and not for profits of a small crowd of “influential” developers of natural resources.

1 Seportology—scientific discipline which studies patterns and methods of maintaining ecological balance in converted and conditionally-natural environment.

2 Law “About Specially Protected Natural Territories” (with amendments as of June 15, 2017), Article 23, paragraph 1.

3 Same as above, Article 14, paragraph 1.

4 Same as above, Article 7, paragraph 2. “Competence of the Government of the Republic of Kazakhstan include:...

2) right of ownership, utilization, and disposition of specially protected natural territories and

- objects of the state nature reserves fund of the country-wide importance.”
- 5 Statements about the Committee of Forestry and Wildlife of the Ministry of Agriculture of the Republic of Kazakhstan. Adopted by a Decree of the Minister of Agriculture of the Republic of Kazakhstan dated on June 5, 2015, No. 18-5/520. Article 2, paragraph 14, subparagraph 40. The Committee’s “role is to manage specially protected natural territories that are under its jurisdiction; assure their safeguarding, protection, restoration, and also scientific research.”
 - 6 Land Code of the Republic of Kazakhstan (with amendments as of July 11, 2017), Article 137, paragraph 1: “Lands of reserve are all lands that are not owned or used, and that are under control of district executive organs.”
 - 7 Law “About Specially Protected Natural Territories,” subparagraph 2, paragraph 6, Article 14.
 - 8 Same as above, paragraph 2, Article 23.
 - 9 Same as above, Article 46.
 - 10 Same as above.
 - 11 Maral (*Cervus elaphus maral*) is one of the subspecies of red deer.
 - 12 Draft. Correction of Feasibility Study of the Ile-Alatau State National Natural Park in the Part of Functional Zoning and Infrastructure Development Master Plan.—Almaty, 2013, p.8. “In accordance with the above named project of 2012, the Ile-Alatau SNNP with a total area of 199,673.5 hectares, has the following functional zones:
 - natural reserve zone (protection procedures of a reserve)—57,786 hectares (28.94%);
 - zone of ecological stabilization (protection procedures of a reserve with some admission of scientific activity and recreation)—23,280 hectares (11.7%);
 - zone of tourism and recreational activity (protection procedures of a protected area)—14,991 hectares (7.5%);
 - zone of limited economic activity (protection procedures of a protected area)—103,616.5 hectares (51.9%).
 Thus, protection procedures of a reserve currently cover 80,601.5 hectares or 40.4% of the total area of the park.”
 - 13 Law “About Specially Protected Natural Territories,” Article 14.
 - 14 World Heritage Convention, <http://whc.unesco.org/en/tentativelists/1681>, (last visited July 25, 2017).
 - 15 Law of the Republic of Kazakhstan “About Protection and Utilization of Sites of Historical and Cultural Heritage” (with amendments as of March 29, 2016).
 - 16 Convention on Biological Diversity, <https://www.cbd.int/convention/text/default.shtml>. Provisions of the Article 8 “In-situ Conservation” are not accounted either. “Each Contracting Party shall, as far as possible and as appropriate:
 - ...
 - (d) Promote the protection of ecosystems, natural habitats and the maintenance of viable populations of species in natural surroundings;...
 - (f) Rehabilitate and restore degraded ecosystems and promote the recovery of threatened species, inter alia, through the development and implementation of plans or other management strategies.”
 - 17 Saltykov-Shchedrin M.E. History of a Town.
 - 18 John Galbraith. Economics and the Public Purpose.—Moscow, 1979, p.361.
 - 19 Krylov I.A. Pig under an Oak (fable).
 - 20 To see the full text of comments to the law “About Specially Protected Natural Territories,” please, visit, <http://esgrs.org/wp-content/uploads/2016/12/2016.10.20-%D0%9F%D1%80%D0%B5%D0%B4%D0%BB%D0%BE%D0%B6%D0%B5%D0%BD%D0%B8%D1%8F-%D0%BF%D0%BE-%D0%B8%D0%B7%D0%BC%D0%B5%D0%BD%D0%B5%D0%BD%D0%B8%D1%8E-%D0%B7%D0%B0%D0%BA%D0%BE%D0%BD%D0%B0-%D0%BE%D0%B1-%D0%9E%D0%9E%D0%9F%D0%A2-004-%D1%81-%D0%BF%D1%80%D0%B0%D0%B2%D0%BA.pdf>.



UDC 502/504
LBC 20.1
B38

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

Editors: **Valeriy Krylov, Sergey Kuratov, Nataliya Medvedeva**

Translator: **Sofya Tairova**

Designer: **Elena Panyukova**

Design and Layout formatted by: **Irina Kuryanova**

All photos were taken by **Ravil Nasyrov**.

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:
gsalmaty@gmail.com.

B38

ВЕСТНИК «ЗЕЛЕНОЕ СПАСЕНИЕ» 2017. – Алматы, 2017. – 104 с.

GREEN SALVATION HERALD 2017. – Almaty, 2017. – 104 p.

ISBN 978-601-06-4441 0

Submitted to publisher 31.07.17. Approved for printing 3.08.17.

Number of copies printed: 150.

Printed by LLP “DELUXE Printery”.

ISBN 978-601-06-4441-0

Copyright © 2017 The Ecological Society Green Salvation

Photographs copyright © 2017 Ravil Nasyrov

FOR NOTES



www.esgrs.org

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



The Ecological Society Green Salvation



**A05K0H4, Republic of Kazakhstan, Almaty,
Shagabudinova Street 58, apt.28.
Tel.:+7 (727) 253-62-56.
E-mail: gsalmaty@gmail.com
Website: <http://esgrs.org>**