

MINUTES

of a Round Table held jointly with Mangistau *Oblast* Court to discuss the analysis of the compliance of the environmental and civil procedural legislation of the Republic of Kazakhstan with the Aarhus Convention and the analysis of judicial decisions from 2008-2011 on disputes relating to access to environmental information, public participation in decision-making and access to justice in environmental matters

14 December 2011

Aktau, 1st *mikroraion*,
building of the Mangistau branch
of the Zhaik-Caspian Department of the Environment

The following were present:

1. Director of the Mangistau Aarhus Centre social fund, Kazhimurat Seilkhanovich Khairushev.
2. Director of the Alas Centre for Legal Support, Vladislav Vyacheslavovich Trifonov.
3. Director of the Mangistau *Oblast* Society for the Protection of Consumer Rights civil society organisation, Nikar Malikovna Rafikova.
4. Chairman of the Board of Mangistau Tabigaty civil society organisation, Adylbek Mustazhebovich Kozybakov.
5. Judge of the Mangistau *Oblast* Court, Gulzhakhan Murzagulovna Imangalieva.
6. Judge of the Special Inter-district Commercial Court, Aidarbek Shapagatuly Tlenov.
7. Judge of the Special Inter-district Commercial Court, Marat Ormanbekuly Kuzdeubaev.
8. Senior assistant to the Environmental Prosecutor of Mangistau *Oblast*, Azat Sabyrzhanov.
9. Director of the Mangistau branch of the Zhaik-Caspian Department of the Environment, Baurzhan Mukyrovlch Niyazov.
10. Deputy Director of the Directorate for Natural Resources and Regulation of Natural Resource Use of the Mangistau *Oblast Akimat* [local government], Orynbasar Abdievich Tokzhanov.
11. Senior state expert of the Mangistau branch of the Zhaik-Caspian Department of the Environment, Lidiia Grigorevna Bystritskaia.

Chair of the meeting: K.S. Khairushev.

Secretary of the meeting: A.M. Kozybakov

Agenda:

1. Analysis of the compliance of environmental and civil procedural legislation of the Republic of Kazakhstan with the Aarhus Convention.
2. Analysis of judicial decisions from 2008-2011 on disputes relating to access to environmental information, public participation in decision-making and access to justice in environmental matters.

The following spoke:

1. K.S. Khairushev talked about a letter from a representative of the Ministry of Environmental Protection, Diana Mukanova, stating that a decision on Kazakhstan's failure to fully comply with the Aarhus Convention had been passed at the meeting of the Parties to the Convention in Chisinau (Moldova) earlier this year. This decision will come into force on 1 May 2012 unless Kazakhstan informs the Convention Secretariat that the issues raised have been rectified by 1 January 2012. In this respect, the Ministry of Environmental Protection has asked Kazakhstan's Aarhus Centres to discuss the situation with all the parties concerned and submit the relevant recommendations to the Government.
2. V.V. Trifonov stated that Kazakhstan's ratification of the Aarhus Convention was a sign of Kazakhstan's commitment to democratic principles and that the Mangistau Aarhus Centre had been set up to fulfil the goals of the Convention in Mangistau *Oblast*. However, it had been observed that national legislation failed to comply with the principles and provisions of

the Aarhus Convention in several places, namely the Law on Subsoils and Subsoil Use, which contains several restrictions on the acquisition of information by the public. According to the Convention, the ‘public’ was one or more natural or legal persons, but the above-mentioned Law granted the right to receive complete and reliable information on the environmental impact of actual or planned subsoil operations only to civil society organisations whose object was environmental protection. This was to say that citizens and legal entities that were not civil society organisations fell outside the category of persons that could receive information. He also did not agree with the fact that legislators mentioned only findings [conclusions] of state environmental review, which might not take into account public opinion. Moreover, it was important and necessary to take into consideration comments from the public (article 8 of the Convention), in connection with which it was suggested that consideration be given to the introduction of a rule making a public environmental review [*expertiza*] or expert report by environmental NGOs compulsory for legislation that affected the environment.

The RK Code of Administrative Offences had a separate chapter on environmental administrative offences. In accordance with Article 634 of the Code, a communication or statement by natural or legal persons or a communication in the media constituted grounds for instituting administrative legal proceedings. However, the law did not provide for further public participation in the examination of environmental administrative offences.

Chapter 34 of the Code specified the participants in administrative proceedings, where the injured party was defined as a natural or legal person who suffered physical, financial or non-pecuniary [‘moral’] damage. If this was the case, how could citizens or civil society organisations participate in such proceedings, where the interests of society, rather than their own interests, were affected, and damage was caused to the environment and not to them personally?

3. The judge of the Mangistau *Oblast* Court Gulzhakhan Murzagulovna Imangalieva noted the significance of the Aarhus Convention and the necessity to observe it meticulously. The Mangistau *Oblast* courts had not heard any disputes on access to justice or environmental information. The applicable procedural legislation of the Republic of Kazakhstan complied with the Aarhus Convention and did not create obstacles for access to justice by natural and legal persons, including civil society organisations, who could act either in person or through representatives. Issues of jurisdiction, court costs and timeframes for filing actions were clearly regulated by procedural legislation and did not give rise to varied interpretations.

4. A.Sh. Tlenov, judge of the Special Inter-district Commercial Court, read out statistics on claims filed: in 2009, nine claims were received, out of which six were heard, three were granted and three were rejected; in 2010, six claims were received, out of which four were heard, three were granted and three were rejected; in 2011, five claims were received, out of which four were heard, and all were granted. The cases examined were not connected to the Aarhus Convention. Civil society organisations and natural persons could apply to the environmental prosecutor to protect their environmental rights.

5. A. Sabyrzhanov stated that in three years, not a single application had been made by a natural or legal person to defend its right to a healthy environment. They [the prosecutor's office] published all reports on the website after each check carried out. Moreover, they reported on their activity in the media every quarter.

During the **discussion**, O.L Tokzhanov, L.G. Bystritskaia and N.M. Rafikova expressed their opinion on the agenda items and answered questions put to them.

Having discussed the opinions of those present, the round table participants produced the following **recommendations**:

1. In order to ensure full participation by the public in decision-making, it is recommended that resource users and other economic entities hold public hearings with the participation of the Mangistau Aarhus Centre.
2. In order to enforce the rights of the public concerned in environmental matters, it is recommended that the Mangistau *Oblast* Court publishes information on judicial decisions passed on such matters in a separate list on its website.
3. Amendments should be initiated to tax legislation to waive state duties in environmental cases for legal and natural persons.
4. The *Akimat* of Mangistau *Oblast* and the Mangistau Aarhus Centre should sign a memorandum of cooperation.

Chair of the meeting: K.S. Khairushev.

Secretary of the meeting: A.M. Kozybakov

[original stamped and signed]