

ACTIVITY OF THE SUPREME COURT OF KAZAKHSTAN
for purpose to develop and strengthen international legal cooperation.
by Justice Beibut Shermukhametov, Judge, Supreme Court of Kazakhstan

1. Kazakhstan is a member of the UN Commission on Sustainable Development, the Interstate Commission on Sustainable Development in Central Asia, and the regional Eurasian network of the World Business Council for Sustainable Development. Takes active part in the processes «Environment for Europe» and «Environment and Sustainable Development for Asia», the United Nations Development Program, the World Wildlife Fund (WWF) and other international organizations.

2. My country is the initiator of the Green Bridge Partnership Program, which was signed by many countries in Europe and Asia (III Economic Forum, Astana, 2010; UN General Assembly, 2011, UN Conference on Sustainable Development, «Rio + 20», Rio de Janeiro, 2012).

3. International conference on the topic: «Building a world without nuclear weapons», dedicated to the 25th anniversary of the closure of the Semipalatinsk nuclear test site.

4. Kazakhstan has ratified and (or) has joined to over 60 international conventions and treaties directly or indirectly affecting the sphere of environmental protection. First of all the 1992 Declaration on Environment and Development, the UN Convention on the Protection of the World Cultural and Natural Heritage of 1972, and others, including the Aarhus Convention on Access to Information, Public Participation in Decision-Making and Access to justice in environmental matters.

5. Close cooperation with foreign partners in priority areas of judicial activity was carried out (UNDP, EU, World Bank, UNICEF, OSCE Center in Astana, Venice Commission (European Commission for Democracy through Law), German Foundation for International Legal Cooperation (IRZ), German Society for International Cooperation in the Republic of Kazakhstan (GIZ), Representation of the American Bar Association (ABA CEELI), Friedrich Ebert Foundation, Prison Reform International PRI).

6. The project of the Supreme Court and UNDP «Improving the system of judicial monitoring in Kazakhstan» is implemented annually and directions for further cooperation in the framework of new projects.

7. Kazakhstan is a member of the International Association of Judges and the International Association of Enforcement Officers, and annually participates in their conferences. It was decided to hold the next meetings of the IAJ and the IAEO in Astana in September of 2019. And it's amazing! More than 600 delegates are expected to arrive from the member states of both organizations.

8. In order to assist local and other courts on rendering international legal assistance in court cases, the Instruction was approved on May 11, 2016 on the provision of legal assistance by the courts of the Republic of Kazakhstan and seeking legal assistance from the courts of foreign countries. In particular, the courts of the republic provided international legal assistance on 2017 - 2018 for

more than 11,300 requests and appeals of courts of foreign states, petitions of citizens and legal entities related to the execution of decisions and other official documents of the courts.

9. The problems of ecology and environmental regulation are important for Kazakhstan and for its entire legal system. The Supreme Court monitors and controls the quality and quantity of environmental cases. In all areas there are specialized economic courts that deal with environmental disputes between government agencies and legal entities. District court considers such disputes if one of the parties of the dispute is an individual. Administrative offenses are dealt with, in specialized administrative courts. Criminal cases in the field of environmental law are considered by specially trained judges. Appeals against judicial acts of courts of first instance are considered by special judges of regional courts.

10. Every year at least 4 times (due to the vast territory the courts are divided into 5 regions - Central, Northern, Southern, Western and East) training seminars with judges are held on the topic: «Judicial application of environmental legislation in civil matters, including disputes arising from the Aarhus Convention».

Regarding possible forms of expanding international cooperation in the environmental field, it is considered:

- to post information translated in English about court decisions on important issues. Such information is available in the Kazakh and Russian languages in the «Torelik» judicial database;

- to ensure access of courts to the latest international scientific and analytical legal publications of comparative legal analysis;

- more tutorials, conferences, webinars, video presentations of study visits of courts of other countries on environmental issues are planned. It would be very useful to continue the practice of inviting foreign judges to Kazakhstan for training seminars, as well as organize the training of judges of Kazakhstan to European courts for the implementation of the Aarhus Convention.

For example, in August 2018, in the city of Almaty, with the assistance of the OSCE Office of Programs, Luc Lavrysen - Judge of the Constitutional Court of Belgium and Anders Bengtsson - Senior Judge for Land Issues and the Environment in Växjö, Sweden, held a training seminar for judges of Almaty. The judges praised and thanked them for the clarity, ease and accessibility of the material presented. Professionals in their field - can't say otherwise!

11. The result of the seminar is the decision of the judge Kazymbetova, of the Almaty Economic Court, on February 4, 2019. The Green Salvation Public Association appealed to the court against the refusal of the Almaty Tourism and External Relations Department to provide reliable information on the availability of a «zero option» for the Kok-Zhaylau resort under construction. The public authority refused to provide information, stating that this option does not exist. Although in separate statements in the media representatives of the state body and the management company used for one's term.

12. According to Articles 4 and 5 of the Aarhus Convention, the public has the right to request information from government agencies that are required to provide it upon request. The public also has the right to receive information and commitments of authorities to collect and disseminate information of public interest, regardless of the request.

13. The court decided that the state body unreasonably refused to the Public Association and obliged it to provide such information. This decision fully complies with the requirements of Article 9 of the Aarhus Convention, that in national legal systems, the Parties specify the norms in their national legislation and provide the public with a mechanism to enforce the provisions of the Convention and the environmental legislation.

14. In conclusion, I would like to note that as a result of the discussion of law enforcement and judicial practice, now the Government drafts a new Environmental Code is being developed. The adoption is planned for this year. It is expected that it should reflect the Concept of «green economy», the goal of environmental regulation, international environmental standards, primarily the European Union, the wide participation of non-governmental organizations and the public, the principle of «the polluter pays». On the proposal of the Supreme Court, it should contain clear grounds for bringing to responsibility for environmental offenses, the use of non-interfering alternative measures to influence the offender, clarification of terms, for example, what should be understood under emissions, environmental resolutions, the procedure for resolving disputes.

In this regard, the new Administrative Procedure Code is being developed in Kazakhstan, where it is planned to transfer all disputes related to appealing against the actions of state bodies and officials. Its adoption will lead to the initial resolution of such disputes within the framework of authorized ministries and departments, and, in the event of a failure to reach a consensus, into the plane of judicial proceedings. Thus, judicial control will be ensured, which should increase the legal culture of nature users and interested organizations and institutions.

As it was said on the Global Judges Symposium, in Johannesburg, (known as the Johannesburg Principles on the Role of Law and Sustainable Development), «an independent judiciary and judicial process is vital for the implementation, development and enforcement of rights of the environment. Members of the judiciary and those contributing to the judicial process at the national, regional and global levels, are crucial partners for promoting compliance, implementation and enforcement of international and national environmental law».

Thank you for attention

Judge Beibut Shermukhametov, 5/02/019