



# **"GREENWOMEN" ENVIRONMENTAL NEWS AGENCY**

**Central Asia**

**2006**

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**Freedom of speech is a difficult issue in Central Asia. The Region's media agencies typically represent one of the two opposite points of view. Some media outlets side with those in power, while others represent opinions of certain opposition groups. Media outlets are controlled by financial and industrial groupings, certain clans and oligarchic conglomerates. Under these circumstances about 90% of mass media depend on power structures or stakeholders. Hence, environmental issues coverage is a function of objectives pursued by authorities or other media owners.**

Considering that in Central Asia there is a large number (five thousand) of media outlets covering a relatively small 80 million-persons-strong media market, plurality of opinions is still an emerging phenomenon. For example, 90% of all publications express pro-government or radically different opposition points of view. In other words, the situation does not provide for expression of multiple opinions.

As before, in Kazakhstan journalists are defenseless and can not counter arbitrary actions of authorities. Below are several examples illustrating this fact.

As a stunning contradiction to the country's Constitution, which calls for equal protection under the law, Kazakhstan's Criminal Code contains six articles defining penalties for libel. Articles 129 and 130 define penalties for libel aimed at so called "common" citizens. Article 318 provides for penalties for libel or other actions adversely impacting the honor and reputation of the President of the Republic. The same Article contains a clarification stipulating that public announcements conveying critical comments regarding presidential policy decisions do not fall under Criminal Code provisions. Article 319 defines penalties for actions aimed at the honor and reputation of public deputies, classifying these actions as "public offense aimed at a deputy of the National Parliament fulfilling his responsibilities as a deputy or related to fulfillment of such responsibilities". Article 320 penalizes for libel aimed at officials, covering a range of unspecified civil servants.

While Article 343 is to the contrary very specific and defines punishment for libel aimed at a judge, prosecutor, detective or court official.

In September 2003 the Law “On changes and additions to certain anti-corruption legislative acts of the Republic of Kazakhstan” introduced changes to the Criminal Code Article 129 (Libel). In accordance with these changes, libel associated with accusations of major corruption crimes carries a penalty of freedom limitation or incarceration for the period of up to three years. Consequently, journalists investigating corruption crimes bear an additional burden of responsibility making media investigations even more risky.

“Adil Soz” Freedom of Speech Protection Foundation provides the following analysis of the contemporary situation in Kazakhstan.

#### **Incarceration - 1**

Mr. Vladimir Mikhailov («Diapazon», Aktobe).

#### **Attacks on media agencies staff - 9**

Zhuldyz Toleu («Svoboda-Azattyk», Astana), Mr. Evgenii Kirienko, (“31 channel” television company, Karaganda), Mr. Maxim Kartashov («Vremya», Almaty), Mr. Serik Kabyshev («31 channel» TV and radio company, Pavlodar), Mr. Grigorii Melnikov («Vremya», Petropavlovsk), Mr. Andrei Lukashevskii («Tan» TV and radio company, Almaty), Mr. Zhumabai Kuliev («Anna tili», Almaty), Mr. Esenbek Kenzhekaraev («Molshylyk ushyn», Sozak district, Southern Kazakhstan Region), Mr. Ruslan Nasyrov («ART-studio», Shymkent).

#### **Unfulfilled judicial decisions - 1**

Mr. Vladimir Mikhailov («Diapazon», Aktobe)

#### **Prevention of legal actions - 1**

Ms. Elena Getmanova («Diapazon», Aktobe)

#### **Threats - 4**

#### **Interference with professional actions of journalists -**

11

#### **Censorship demands - 6**

#### **Interference with media operations - 5 (of which confiscation of published copies - 1)**

#### **Refusals and limitations of access to information of high importance to the public - 166**

## **Criminal cases - 13 including:**

### **Libel accusations - 4**

Mr. Gennadyi Benditskii («Vremya», Almaty), Mr. Yurii Mizinov («Navigator»,Almaty),Ms. Svetlana Rychkova («Assandi-Times»,Almaty), Ms. Elena Getmanova («Diapazon»,Aktobe).

### **Accusations of ethnic and religious hostilities instigation - 2**

Ms. Aliya Akhmetova («Kazakhskaya pravda»,Almaty),Mr. Farkhat Kinzhitaev («Vzglyad»,Karaganda).

### **Accusations of criminal penalty conditions violation - 1**

Mr. Sergei Duvanov(Almaty)

### **Civil suits dealing with protection of the honor and reputation - 24**

### **Pre-court claims - 16**

Announced moral damages compensation claims – 852,916,666 tenge (approximately 6.6 million USD)

Claims against media outlets made by: officials - 15,legal entities - 12,individual citizens - 13.

In accordance with “Adil Soz” International Freedom of Speech Protection Foundation data,within 10 months of 2004 the Foundation’s monitoring program registered 403 violations of journalists’ rights on access to information. As a comparison,in 2003 only 384 violations were registered. The highest number of violations involves representatives of government agencies – 142. Ministry of internal affairs representatives are among the leaders with 44 cases, followed by health care officials,including Ministry staff,as well as private clinicians, with 31 cases. Representatives of regional,city and district Akims’ offices (local executive branch),leaders of state and private enterprises, banks,markets,representatives of prosecutors’ offices routinely violate the right on access to information.

The most typical violation Regional Akim’s offices and their press services commit month after month is the preferential treatment given to state-owned media as compared to their independent counterparts. Unfortunately,in practical terms only a fraction of environmental information becomes publicly available as a result of media broadcasts,web site publications or access in libraries and community centers.The vastamounts of information remain accessible only based on special requests directed to government and other entities.

Government officials and entrepreneurs still do not recognize the journalists’ right to obtain information of high importance to the gen-

eral public and do not perceive it as an obligation to share such information citing ownership rights as an excuse.

Emergency situations committee conceals information about emergencies, Ministry of health care and its local offices hide data related to medical issues. Ministry of ecology has been nicknamed "The Anti-Ecologists Ministry". These derogatory nicknames seem to reflect the situation on the ground. As an example, when journalists contact officials to obtain information about mass deaths of animals or destroyed winter habitats government representatives miss opportunities to draw widespread public attention to these issues and instead refuse to provide information on the issues at stake.

A wide variety of denial techniques is employed to prevent journalists from gaining access to information – from polite vague responses to threats and promises of physical actions typically used by private security services and official guards. The reasons are also highly diverse and ranging from the desire to hide negative aspects of one's operations to fear of responsibility to legal incompetence.

Kazakhstan attempted to introduce legislative regulation of access to environmental information – on 14 January 2004 the Parliament's lower chamber, Majilis, received a bill "On Environmental Information", initiated by a group of parliamentary deputies. The bill provided for a fairly broad definition of environmental information to make sure that interested parties can access the full spectrum of information concerning Kazakhstan's environmental conditions. The bill stipulates that interested parties do not have to disclose the reasons for their interest in environmental information. Thus, the right to access such information becomes unconditional. "As an unalienable element of the mechanism for implementation of the right of private citizens and entities to access environmental information" the bill decrees that government entities should publicize environmental information via official media agencies. Authors of the bill believe that to obtain environmental information citizens can appeal to the Environmental Protection Ministry, Ministry of Energy and Mineral Resources, Ministry of Agriculture, Land Resources Management Agency, Emergency Situations Agency and local branches of these entities. The authors also feel that one of the bill's primary objectives is "to find a reasonable balance between ensuring public access to complete and accurate environmental information and securing public and private interests". Based on this premise the authors call for access limitations concerning "environmental information of confidential nature or information publication of which will adversely impact national security interests". The authors of the bill call for free of charge as well as paid access to information. "To establish real guarantees of access to environmental information it is important to make sure that established state tariffs for access are commensurate with public incomes. The price should not serve as an obstacle preventing access", explains the bill's cover memo. It is proposed that funding for development, management and

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updates to environmental information registries will be provided using state budget funds.

However, several organizations believe that the initiated bill on several counts leads to deterioration of legal conditions for execution of the public's right to access environmental information. As compared to the current legislation, the initiated bill will adversely impact the public's ability to execute its right to access environmental information and will create major challenges preventing Kazakhstan from fulfillment of its obligations assumed upon international conventions ratification.

In particular, the following provisions raise major concerns:

- development of a restrictive list of government entities responsible for providing environmental information;
- introduction of more cumbersome procedures required to petition government agencies for environmental information;
- advance payment requirement to be fulfilled before a government agency can review a petition for access to information;
- extended maximum turnaround periods – one month instead of currently applicable 15 days;
- additional reasons for the government agency in question to extend turnaround period to exceed one month;
- introduction of a series of additional reasons for denial of access to environmental information;
- extensive reasons to classify environmental information as confidential based upon discretion of government entities and owners of information.

The bill "On Environmental Information" does not meet requirements of several international environmental conventions ratified by the Republic of Kazakhstan. First of all, this relates to provisions contradicting the Orhus Convention governing access to environmental information. Second, Article 9 of the bill "On Environmental Information" related to the denial of the right to access environmental information on the grounds of "adversely impacting relations with foreign countries" is very difficult to reconcile with Kazakhstan's obligations under Article 9 of the Convention on transboundary impacts of industrial accidents and several provisions of the Convention on transboundary environmental impacts assessment. Third, several international environmental conventions ratified by the Republic of Kazakhstan provide for joint efforts of all parties aimed at improving conditions for access to environmental information. Specifically, these responsibilities are outlined in the Orhus Convention, Framework Convention on climate change, UN Convention on combating expansion of deserts.

## Conclusions:

1. It is necessary to develop and adopt the Law “On changes and amendments to national legislative acts resulting from the Orhus Convention ratification”, and to make sure that the current legislative acts meet Orhus Convention requirements.
2. It is important to strengthen oversight and enforcement of legislative acts governing access to environmental information.
3. Access to environmental information should be decentralized. Currently all environmental information is managed by a central government body – Environmental Protection Ministry – and, consequently, in cases of denial of access to environmental information all legal actions are taken against Environmental Protection Ministry. It is important to make sure that regional Environmental Protection Departments have access to adequate informational resources.
4. Public communication and awareness-building potential of local government entities should be strengthened to support dissemination of information and early warning of activities adversely impacting the environment.
5. Central and regional environmental protection authorities should be required to distribute regularly to all interested parties environmental information in appropriate adapted formats (including pollutants emissions registries).
6. Chapter 27 of the Civil Process Code should include a provision stipulating that contested decisions and actions of government authorities and local self-government entities should be automatically suspended.
7. It is important to promote awareness of the proper ways and means of filing environmental information requests, petitions and other court documents.
8. In accordance with the Orhus Convention the definition of government authorities responsible for providing environmental information is broader than similar definitions applied in Kazakhstan to regulate administrative procedures (including cases of requests for environmental information). Consequently, it is important to expand the range of officials and entities responsible for providing environmental information, specifically, to include entities responsible for environmental observations and collection of appropriate information paid for by the state budget.
9. It is imperative to expand the range of legal entities entitled to have access to environmental information, since in accordance with the Orhus Convention the range of legal entities is broader than specific public unions endowed with such a right in accordance with Article 6 of the Law “On Environmental Protection”).
10. In Kazakhstan a major issue is related to public access to environmental information qualified “for internal use only”, as well as primary statistical data. Possible grounds for denial of access to environmental information outlined in the country’s legislative acts are similar to those stipulated in Sections 3 and 4 of the Orhus Convention Article 4. A proposal has been made to limit legal grounds for

classification of environmental information for “internal use only” and to discontinue application of confidentiality clauses to statistical data on industrial pollution.

11. In Kazakhstan there are no sector-specific laws on information or on environmental information. Under these circumstances in Kazakhstan it is difficult to implement certain provisions of the Orhus Convention, which can be most effectively applied to environmental information, for example:

- on limited application of legal grounds for denial of access to information based on public interest in declassification of such information considering that such information relates emissions (see Orhus Convention, Article 4, Section 3);
- on limited declassification of information not impacting its confidential part not subject to declassification (Orhus Convention, Article 4, Section 6);
- on fees limitation related to environmental information access considering its importance for public health and environmental situation assessment (Orhus Convention, Article 4, Section 8)

These and certain other specific relations concerning environmental information could be more effectively regulated in the framework of specialized laws on information or environmental information rather than by means of introducing amendments to broader currently enacted pieces of legislation.

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The Orhus Convention is making a major contribution to the overall environmental democracy development and has the potential to positively influence the state of society in Kazakhstan.

The Republic of Kazakhstan, a signatory to the Orhus Convention, is not consistent in its implementation: Specifically,

- does not promote priority decision-making on GMO based on opinions expressed by the general public;
- does not support and does not actively participate in the actions aimed at promotion and ratification of The UNECE Pollutant Release and Transfer Register Protocol
- carries out inadequate measures to ensure access to justice on environmental matters. In particular, inadequate measures are taken to implement Article 9.3 of the Convention stipulating that practical steps should be taken to secure the right of NGOs and the general public aimed at environmental legislation implementation, that implementation barriers should be minimized and the judicial branch should be ready to carry out fair trials of environmental cases.
- does not develop and does not strive to maximize potential of electronic media capable of promoting environmental democracy.

The Media Law stifles freedom of speech and hinders protection of the rights of journalists.