

Statement

On April 26, 2010 Reviewing authority of the Supreme Court of the RK rejected the appeal of my lawyer Voronov to initiate review proceedings.

At the briefing that took place after the reading of this decision it was stated that I still have the possibility to independently appeal to the Supreme Court with a petition for the review of this sentence or to the Office of the Prosecutor General.

I will not do that. I am not going to continue this game of a «justice a la Kazakhstan» name.

Before Balkhash rayon court pronounced its sentence I said: “there is no justice, no fairness and no sense to appeal to such a court in any case”.

As a way of protest against obvious partiality of the legal process, violation of the principles of equality and emulation of the parties and rejection of all the major defence petitions, rejection to institute additional and repeated expert examinations, rejection of the petition to cite and examine independent experts and specialists, rejection of the petition to give enough time to prepare for oral arguments myself and my defenders refused to take part in oral arguments and I refused from the last plea.

I have not been delivered to the court of appellate jurisdiction being in custody in investigative isolator of Taldy-Korgan city, I have neither been delivered nor given the chance to speak and testify against charges.

I have not had any possibility to effectively defend myself, to give my arguments and refute arguments of the prosecution party.

The court (I have in mind both Balkhash rayon/district court, appeals instance of the Almaty oblast court and reviewing authority of the Supreme Court) states that I have «run down a pedestrian walking the same direction as the car».

It looks that I have either been driving along the pavement or along the roadside or a pedestrian crossing and have run down a pedestrian.

Neither the investigation body, nor the office of the Prosecutor, not even the court in general assessed the behavior of the pedestrian that has been walking at night along the unlit highway, outside of the inhabited locality, just in the middle of my driving lane where there was no any pedestrian crossing, not a single prohibitory sign or guard post while the permitted speed is 110 km/h.

At the same time a pedestrian under the law shall bear the same responsibility for the traffic rule violation resulting in grave consequences as a driver.

The court has failed to answer the question why being absolutely sober, not exceeding permitted speed, driving along the highway at night, outside any settlement I had to foresee the appearance of a pedestrian on the roadway violating traffic rules. It is assumed that all the traffic participants observe traffic rules.

The court has not given any attention to the fact that there was no any unbiased evidence of the fact that I have been blinded at a distance of 100 meters away from the upcoming cars. At this the court rejected my petition in carrying out expert examination to confirm or reject this statement.

The court has not taken into account that during the entire investigation period I have been in the status of a witness and have not been able to use my right either to challenge experts or to ask them my questions. I was familiarized with the results of the auto-technical expert examination at the same time with the decree on its authorization. As a result expert examination results based on falsified data have been used as a basis for the charge and the sentence.

The court refused to examine the conclusion of independent experts and specialists and rejected the petition of the legal defence to question them in the court. At the same time

according to the conclusion of two Russian specialists-experts with more than 20 years of experience my car has not exceeded maximum permitted speed given the time of the day, weather, pavement and etc. According to the same conclusion I had no technical possibility to avoid traffic accident and run down of the pedestrian; I did not have the chance to take any measures to initiate brake system. Conclusion of Kazakhstan independent expert, one of the authors of the methodology, based on which auto-technical forensic expert examination is performed in our country, has prejudiced all the conclusions of the formal forensic expert examination and pointed out to a number of methodological errors. Conclusions drawn by these foreign and local experts as well as by specialists that cause no doubts in terms of their professional qualifications have been completely ignored by the court.

There is no sense in listing a number of other procedural violations, which are reflected almost comprehensively in the mission of independent observers of the reputable International Commission of Lawyers that have visited my case examination in the court of appellate jurisdiction.

Unfortunately neither the investigation body, nor the Office of the prosecutor or the court were willing or were going to look into anything at all.

As the sentence and the court rulings of the next instances run that the court has passed a commensurate sentence and has taken into account both aggravating and mitigating circumstances. At this the prosecutor stated during the legal proceedings in the Balkhash rayon court that there were no mitigating circumstances in my case. For the prosecutor and the court it did not matter that I have not been called earlier to criminal responsibility, that I have children family, that I am positively characterized and I am the winner of a number of international prizes, a member of a number of commissions/committees, expert councils and groups. The fact that I am not a hit-and-run driver; on the contrary I have undertaken all possible measures, immediately called the police and ambulance. The fact that I immediately begged pardon of the relatives of the diseased Kanat Moldabaiev that have come to the accident site and in three days - that of his mother. All these did not matter at all either to the prosecutor or to the court.

With such «judiciary system» there are no chances for me to obtain justice.

But I have the right to personally appeal to the UN Human Rights Committee. And I will avail myself of this right.

The heartache of this situation is the fact that I have been an unintentional cause of the death of a man. I have not seen the pedestrian, could not see him but when I did see him it was late and I could not avoid the run down. This is the tragedy, unhappy concatenation of circumstances. In this situation I have done everything I considered to be necessary and correct with regard to the relatives of the diseased and in the first place with regard to his mother Raikhan. I am grateful to her for her forgiveness words, for her attempt to prove reconciliation, for her statements and her courage she displayed when trying to make her way from her village Bakanas to Taldy-Korgan so that to confirm in the court of appellate jurisdiction that she has pardoned me. This is extremely important from the moral point of view. And probably for me this is the topmost.

Yevgeniy Zhovtis
May 8, 2010
Ust-Kamenogorsk city