

“20 years of the OSCE Copenhagen Document:
Status and future perspectives”
Copenhagen, June 9-10, 2010

**To OSCE Chairman-in-Office
Saudabaev Kanat Bekmurzaevich**

**Copies:
To Foreign Affairs Ministers of participating
countries of OSCE and United Nations,
Diplomatic missions in Kazakhstan,
International human rights organizations.**

**From Participants of “For supremacy of the
statute law
and observance of human rights in Kazakhstan ”
public meeting taken place on 6th June 2010 in
Astana under the auspices of ““Civil action”
Human rights joint centre”**

In Kazakhstan there are a lot of problems in implementation of impartial and open justice for public. Most of people do not have confidence in courts. Also there are not other ways to regulate disputes.

Kazakhstan has ratified most of human rights treaties, but national legislation has not been brought into accordance with entered international and legal obligations. Thus the legislation and law enforcement practice do not provide means and processes of effective legal safeguard adequately.

The Government does not use fundamental principles of international law in the sphere of human rights and freedoms in the legislation and law enforcement practice, also they do not use accessory documents entered by Organization for Security and Cooperation in Europe, United Nations, European Court of Human Rights, etc.

The legislation has many gaps of uncertainty, incorrect language, by which Authorities interpretate different law provisions on the assumption of subjectively determined principle of expediency, many additional norms, which are incongruous to the principle of legal certainty and foresee ability.

In law enforcement practice Authority representatives often work by provisions of subordinate acts (instructions, rules, directions, etc), which are not often accorded with not only international standards, also present country legislation, Constitution.

It ought to be noted that, in 2008 the Supreme Court of Kazakhstan passed regulatory resolution about using of treaties standards, however actually courts do not use the standards of ratified international acts.

Kazakhstan courts do not often use the Constitution standard, which says, that (clause 1,3, part 4) “The present right in Kazakhstan is standards of the Constitution, which is accorded with laws, other legal acts, treaties and other Republic obligations, also normative decrees of Constitutional Council and Supreme Court of the Republic.”

It is not considered that the treaties ratified by the Republic have priority under its laws and they are used at first hand, except those cases, when it is said in the international law, that it is necessary to issue the law to use it.

Actually courts do not use standards of International law, which confirm the right of every person to adequate standard of living for himself and his family (clause 1, part 11; clause 1, part 2 ICESCR) .

At present time The Government of Kazakhstan do not keep direct obligation of United Nations, according to The Covenant to take such legislation and political measures, which are necessary for protection of adequate standard of living for a citizen of Kazakhstan.

The serious problem is the Decree of the Constitutional Council of Kazakhstan from 18.05.2006 №2 “About official interpretation of the subparagraph 7, part 54 of Kazakhstan

Constitution”. So in whereas clause of this Decree of Constitutional Council referred to its Decree from 11.10.2000 №18/2, in which it is confirmed that Vienna Convention on the Law of Treaties 1969 “ does not determine order of agreement realization. This refers to Constitutional and legislation prerogatives of governments and comes from generally recognized principles of international right – sovereign equality of governments”. And hereinafter “on the assumption of this, the Constitutional Council supposes that in case of accept of treaty of Kazakhstan by fixed order or its separate provisions contravened the Constitution of the Republic according to clause 2 part 4 of Main Law of high and juristic power in Republic territory, such agreement entirely or partly, which is accepted incongruous the Constitution, is not liable to realization.” At last, in the substantive provisions of this Decree the constitutional Council convinced that: “...4. In case of accept of treaty of Kazakhstan by fixed order or its separate provisions contravened the Constitution of the Republic, such agreement or its suitable provisions are not liable to realization.”

This decision of the Constitutional Council is at variance with Vienna Convention on the Law of Treaties 1969, including part 27 of the Convention, according to which: “The participant cannot refer to the provisions of its internal rights as acquittance for not realization of agreement by him.”

Actually courts in Kazakhstan do not use standards of International covenant on Economic, social and Cultural rights, which says, that (clause 1 part 11) “Participated in the Covenant countries accept rights of everyone to adequate standard of living for himself and his family, including enough nutrition, clothes, habitation and continuous improvement of living conditions. Participated countries take suitable measures to realize this right paying their attention to the international cooperation, which is based on free agreement.”

(Clause 1 part 2) “Each participating country in the Covenant individually and by international cooperation including in economical and technical regions has to take maximum measures to provide constant entire realization of rights accepted in the Covenant by all possible ways, including assume legislation measures.”

However the Constitution of Kazakhstan in general does not promote suitable registration of rights aspects to habitation and protection from forced dispossession according to international standards in internal legislation and law enforcement practice.

In the context of the Constitution there is a tendency which means that accommodation, land and other property are considered first of all as market goods, not as human rights, which are demanded special protection of voidable population and consideration of habitation as public benefit.

By the result of legal imperfection of the Constitution internal Kazakhstan legislation does not have not only necessary juristic formalization of prohibition of forced dispossession and protection from forced dispossession by international rights standards, also there are not such terms of international rights as “forced dispossession”, “right not to undergo forced dispossession”, “right to protection from forced dispossession”, “prohibition of forced dispossession” etc.

The direct contravention to international obligations is part 68-1 of Kazakhstan Law “About enforcement proceeding and status of officers of justice”, where it is mentioned possibility of forced realization of court decision about dispossession.

In interpretations of the Covenant statements called notes of general order and which are important parts of international right, United Nations Committee on Economic, Social and Cultural rights has fixed international standards of right to habitation.

Actually in notes of general order №4 (1991) it is said that “right to habitation should not be interpreted by narrow sense. It should be considered as right wherever to live in safe, peace and with caliber... ”

The Committee on Economic, Social and Cultural rights of general order №7, accepted in 1997 worked out more universal interpretation of protection from forced dispossession.

The Note №7 confirms that forced dispossession is rights breach to habitation, also “in connection with interconnectedness of all human rights forced dispossession in many cases causes breach of other human rights.”

Although in Normative Decree of Constitutional Council of Kazakhstan №6 from 05.11.2009 “About official standards interpretation of part 4 of the Constitution of Kazakhstan to order of decision realization of international organizations and their organs” it is said that in parallel with treaties to the present right of Kazakhstan, also standards “of other Republic obligations” (clause 1 part 4 of the Constitution) are referred. The Constitutional Council supposes that other obligations can appear as in their procreant treaties, which can be component parts, or logical conceptual (material), or organization (procedural) sequels; so independent, out of treaties. The first ones can have juristic features ratified treaty in the process of keeping conditions in the normative decree. Official Authorities of Kazakhstan refuse to accept conditions pointed in managing principles, referred to its recommendatory feature.

So at the present time the Government of Kazakhstan having direct obligation to take necessary measures, which are necessary for protection from forced dispossession, breaks it and even becomes initiator of forced dispossession.

In spite of international obligations, Republic of Kazakhstan continues to keep policy of forced dispossession, which is not accorded with international standards. In the result of taken decisions by courts about forced dispossession, which are at variance with International Covenant on economic, social and cultural rights, rights of all family are derogated, also children’s, so international standards of the Convention about child’s rights.

In Kazakhstan courts also borrowers, interest-holders, oralmans (repatriates), disabled people, retired people and other categories of people cannot find protection of their rights. So they cannot realize their main rights and freedoms.

Law enforcement practice avoids correct juristic breach qualification, including pointed discrimination facts. Imperfection of the national legislation, ambiguity of juristic features of forms and ways of discrimination, absence of concrete criterions, which can show discrimination in certain case, prevents offended party to prove discrimination fact.

There are not court practice on claims consideration about discrimination, because often either in juristic consultation or in courts it is said that in the statement of claim there must not be demand of discrimination cancel, and there must be point to breach of concrete right. So in Kazakhstan in comparison with other spheres of court law enforcement practice, there is still no generalization of court practice, consequently, there is no normative decree of Supreme court on affairs consideration about rights breach of non-discrimination by different reasons, which can be important legal measure limitation of discrimination in Kazakhstan society.

All these aspects show incompetency of court system of Kazakhstan to be in parallel with time, necessity of international rights in national legal procedure, in the result of which Kazakhstan citizens including public non-governmental organizations cannot use justice system in Kazakhstan to protect human rights.

According to this, we are addressing you as OSCE Chairman-in-Office to bring taken demands unanimously on public meeting to the notice of Kazakhstan Authorities:

- To reconsider the Decree of the Constitutional Council of Kazakhstan “About official interpretation of subparagraph 7, part 54 of the Constitution of Kazakhstan” from 18.06.2006 to create political and legal basis to bring the provisions of the national legislation into accordance with international obligations of Kazakhstan, which are concerned standards privilege of treaties ratified in Kazakhstan according to its internal right.
- To bring the national legislation and law enforcement practice in sphere of providing and protection of human rights into accordance with international obligations of Kazakhstan, contributed wide use of essential principles of the international law and international standards in human rights.

Also we are calling on you as OSCE Chairman-in-Office to take effective measures to promote realization of the requirements by Kazakhstan. Only these kind of actions can show committal of Kazakhstan to keep the principle of supremacy of the statute law and fundamental human rights and freedoms.

Battalova Z.K. – the president of “Fund of parliamentary development in Kazakhstan” Social fund, the director of “For right habitation!” public campaign;

Blyalov B.A. – the director of “Institution of democracy and human rights ” public association;

Bizhigitov A.Sh. – the chairman of “Human rights mission” public association, the coordinator of “For right habitation!” public campaign;

Omarkhanova K.N. – the coordinator of ““Civil action” Human rights joint centre”;

Shakarbekuly B. – the president of “Ult birligi” social fund;

Alulai B. – the manager of “Grazhdanskoe obshestvo” (“Civil Society”) legal aid centre in Koyandy;

Tsai E.R. - the chairman of “Kamkorlyk” public association on protection of children and parents rights;

Lozovoi A.G. - the chairman of “Pokolenie” public association in Astana

Elyubaeva N.I. – the first secretary of Communistic Party of Kazakhstan, Astana branch;

Tyumentsev A. – the secretary of Central Committee of Communistiazakhstac Young people Union;

Zonova L.N. – the chairman of “Rabochie dvijenie” (“Labour movement”) city council;

M. Abzhan – the chairman of “Shanirak” public association, Astana branch;

Iskakova S.S. – the leader of initiative group of mortgage holders, “For right habitation!” public campaign;

Karkimbaeva Zh.A. - the leader of initiative group of interest holders of “Zhana Kurilis” limited company, “For right habitation!” public campaign;

Sumskaya S.M. - the leader of initiative group of interest holders in 1994, “For right habitation!” public campaign;

Seitova M.P. - the leader of initiative group of interest holders of “ABK -5”, “For right habitation!” public campaign;

Chiklimova V.I. - the leader of initiative group in Slobodka, “For right habitation!” public campaign;

Kereibaeva K.K. - the leader of initiative group of “Polyanka” production cooperative, “For right habitation!” public campaign;

Sarsenbaeva G.S. - the leader of initiative group in Ondiris, “For right habitation!” public campaign;

Utepova G.Zh. - the leader of initiative group in Kirpichnyi, “For right habitation!” public campaign;

Mukusheva D.E. - the leader of initiative group of rental housing in Prigorodnyi, “For right habitation!” public campaign;

Sarsekova M. - the leader of initiative group of habitants of Dukenuly accommodation №7, “For right habitation!” public campaign;

Sarina G.S. - the leader of initiative group in Taitobe “For protection of health and ecology”, “For right habitation!” public campaign.

The participants list of the meeting on 6th June 2010 and additional lists of people supported the address (746 signatures) are enclosed.

The signatures collection is going on.

Astana, 06.06.2010