

**Assylbeck Kozhakhmetov, public defender on the legal trial of “Shanyrak” at the workshop 13 “Leadership of Law III”.**

**There are courts, but there is no justice in Kazakhstan!**

Dear ladies and gentlemen,

Divided judicial system of Kazakhstan does not provide realization of a civil right for a fair judgment and does not serve as an instrument for protection of civil rights and interests. Also, it does not meet the requirements of the OSCE in the field of justice.

I will prove my point of view on the specific example as during the last 9 months I have been a public defender on the legal trial on 25 Kazakhstan citizens who participated in the tragic events taken place on the July, 14<sup>th</sup> 2006 in Shanyrak, district of Almaty. I am talking about 115 families who had to move to Almaty from fallen into decay auls and villages and settle in the deserted and swampy territories and afterwards suffer a forced eviction. As a result, people who tried to protect their houses, demolished by the authorities, are unfoundedly accused of organization of mass riots and are going to be severely punished.

According to Colpenhagen agreement countries – participants of the OSCE acknowledge that in a case of criminal accusation each person has a right for fair and open hearing by a competent, independent and impartial court, created on the basis of law.

The law about “Jury” came into force on the Jan, 1<sup>st</sup> 2007 in Kazakhstan, which let the accused submit a petition for jury consideration of their case.

However the Higher Court of the RK unreasonably refused to satisfy their petition, despite the normative resolution of the Constitutional Court of the RK, confirming the right for jury, and despite the Almaty city court petition for the solution of this question.

Apparently, deprivation of the right for jury has emerged as a result of governmental pressure on the court, as they are interested in the fast trial and demonstrative punishment of “rebels”.

Legal trial consideration by the judges of the Almaty city court was biased and subjective for the following reasons:

- 1) Rejection of defenders’ petitions regarding examination of material evidence;
- 2) Refusal to summon main figures of the case: Chairman of the Department of Court Administration, leading the work of the court officers Onerbayev, Mayor of Almaty Tasmagambetov, Minister of the Interior Muhamedzhanov, who lead the operation of forced demolishing of the houses and eviction of its inhabitants in Shanyrak;
- 3) Refusal in repeated summoning of main witnesses - representatives of the Ministry of Internal Affairs and city administration for verification of emerged fact of lawfulness of military services use of special means and weapons against inhabitants of Shanyrak
- 4) Deprivation defenders and advocates of opportunity to ask “dangerous” questions and make appropriate petitions in the court

In the last case judges replied that defenders may state their concerns in the appeal. Regarding those who showed displeasure administrative fines were imposed, and the threat of administrative arrest were pronounced.

Thus, the prosecutor Ospanov, who participated in the preliminary investigation, has covered illegal actions of the investigator Elubayev, by his negligence and red tape. Both of them did not let me participate as a defender during investigation.

During the trial, the prosecutor Ospanov disputed against public defenders participation, affirming that advocates are more than enough, though the number of public defenders is not limited by legislation.

Impartiality of this representative of state prosecution in Shanyrak case has lead to defenders' petition on his demur. After numerous court rejections Ospanov has been demurred after having come to a trial in state of intoxication and putting up a fight with defendants.

The most serious issue that prosecution did not pay attention to registered facts of tortures as methods of collecting of prejudicial evidence. Undisputable proofs, presented in the court were broken leg of Utegenov, two broken ribs of Taranshiev, spike that came out from Suindikov and shears of nails from the right hand of Bobekbayev.

Unfortunately, the office of Public Prosecutors has referred to "explanation" by the police and did not perform any investigation regarding this issue. The court ignored defenders' petitions that their clients suffered tortures and other unacceptable methods of investigation.

Thus law-enforcement and judicial bodies have broken Copenhagen agreement of OSCE according to which the countries-participants confirm their obligation to forbid tortures and other cruel, inhuman and humiliating methods and punishments.

I have told you only about one example from Kazakhstan judicial practice. Even though so much attention of society and mass media was driven to Shanyrak case, it reflected practically all main flaws of national judicial system.

As a confirmation of my conclusions I want to cite some evaluations from a report of the Special Reporter of the UN Leonardo Despui, on the question of judges and advocates independence in 2005:

- 1) Directly or indirectly executive power still plays a dominant role in judicial system, as in the times of previous (Soviet) regime, and this tendency is strengthened by the creation of strong Presidential regime after the new Constitution in 1995
- 2) The role of the prosecutor as in previous times is still dominant. No doubt that this situation is a main obstacle on the way to democratic development and creates major infringements, which are still characteristic of a judicial system
- 3) Process of judges appointment of all levels of judicial system, their tenure and salary – are all in the hands of the President
- 4) Legal trials against members of political opposition, journalists and other socially active citizens reflects potential for judges abuse regarding control of political opposition and undermining of the principle of the leadership of law.

The only good thing in this gloomy picture is that the RK President recently signed the Optional Protocol to International Pact on civil and political rights and UN Convention against tortures and other cruel, inhuman and humiliating methods and punishments.

Supporting this decision, I think that for any country it is more important to provide objective judgment and unquestionable protection of right and legal interests of the citizens on the territory rather than letting them go to look for truth and justice abroad.