

Explanatory note on relevance and importance of the submitted court decision

1. The submitted document dated 25 November 2013, is the decision by court of first instance on the claim by Green Salvation Ecological Society for the annulment of conclusions of state ecological expertise on the preliminary impact assessment report on the Kok Zhailau project, particularly enabling to develop it on the territory of the Ile-Alatau national park. Our communication ACCC/C/2013/88 is based on the facts of the failures by Kazakhstan to comply with the requirements of articles 7 and 6 of the Aarhus Convention in the course of decision-making on the same project. The court case was initiated by the NGO, whose Chairperson, Mr. Kuratov, and three other members (Ms. Katorcha, Ms. Spatar and Ms. Medvedeva) are also among the persons who submitted the communication ACCC/C/2013/88. The document is directly relevant for the review of this communication by the Aarhus Convention Compliance Committee.

2. In our communication we mentioned the absence of domestic remedies with respect to this case in relation to article 7 of the Aarhus Convention. Nevertheless, the Green Salvation Ecological Society is trying to challenge some public participation issues related to the construction of the Kok Zhailau ski resort as an article 6 of the Convention case. Their claims were dismissed by the court of first instance on the ground that the state ecological expertise on the preliminary environmental impact assessment (feasibility study) is not final and that was in line with the national legislation and the international conventions (Espoo Convention and Aarhus Convention). On 12 December 2013, Green Salvation appealed the decision by court. The decision by appeal court instance shall be taken within two months from the date of the receipt of the appeal by the court. However, there are no hypothetical possibilities for public participation in the decision-making on the siting of the Kok Zhailau ski resort after the feasibility study of the project. Therefore, the communicant is using all available domestic remedies with regard to this project and allegations on non-compliance by the Party with the Convention made in the communication and they will be exhausted before March of 2013. This is confirmation from our side that our communication can be considered at the Compliance Committee's next meeting without the need to take into account use of possible domestic remedies.

3. Also the submitted document proves that the procedure of strategic environmental decision-making on the Kok Zhailau project was very unclear and complicated. You can find that the Almaty municipality (seventh and eighth paragraphs on page 3) and the judge (third and fourth paragraphs on page 6) referred to various documents as strategic decisions for the construction of this ski resort near Almaty. First, it should be mentioned that none of them were subject to public participation. Second, it provides additional evidence that there is no clear sequence of strategic environmental decisions and following decisions on specific activities (projects) in Kazakhstan. As one of negative consequences of it the decision on siting of the ski resort was made somewhere in between the strategic decision-making to construct a ski resort near Almaty without public participation and the environmental impact assessment of its construction on Kok Zhailau with ineffective public participation. In general, it is unclear when early and effective public participation for such projects should take place and how the Government ensures effective public participation when all options are opened, in particular on siting issues and different alternatives of implementation of projects in question.

We consider that this information is important for the review by the Compliance Committee of our allegation on article 7 in conjunction with article 6.4 of the Aarhus Convention.

4. We also would like to draw your attention to the fact that according to the judge's finding the Plan to Develop World-Class Ski Resorts in Almaty Region and near Almaty (approved by Governmental Resolution No.1761 dated 29 December 2012) is the key strategic decision on this project (fourth paragraph on page 6). It confirms our allegation that possibilities for public participation should be provided during the preparation of this plan. So we consider this fact as very important for the review of our communication by the Compliance Committee.

Sergey Solyanik on behalf of the correspondents of the communication
ACCC/C/2013/88.

7 January, 2014