

To the Aarhus Convention Compliance Committee  
From Ecological Society “Green Salvation”  
Almaty, Republic of Kazakhstan.

**Addition to the Public Statement No. ACCC/C/2013/88.**

1. Regarding the letter of the Ministry of Environment and Water Resources.

Ecological Society “Green Salvation” (hereafter – ES) warned the Aarhus Convention Compliance Committee that incomplete and unreliable information about implementation of the Aarhus Convention by the Republic of Kazakhstan (hereafter – RK) is being submitted to the Committee by the state organs<sup>1</sup>. The letter from the Ministry of Environmental and Water Resources (hereafter – MEWR) to the Committee dated on April 3, 2014 (No.02-01-20/227-i) is not an exception.

1.1. Right of the public on participation in decision making process is pronounced in the Environmental Code of the RK of 2007 (Articles 13-14). But the procedure of realization of this right in the RK is not developed till the present moment. Therefore, public participation in the decision making process most often is limited by public hearings. Public hearings, as demonstrated by the experience of the ES, are organized not to identify and account public opinion at the very early stage of a decision making, but to inform the public about an already adopted by state organs decision. In the best case, the public is provided an opportunity to express their suggestions on improvement of an already approved project. Such practice of the state organs initially creates ground for conflicts and public discontent.

Conflict around construction of a mountain ski resort “Kokzhailau” is a bright example of the above stated. The main key document – the **“Plan of development of mountain ski resorts of a world class in Almaty oblast and near the city of Almaty”** – approved by the Decree of the Government of the RK No.1761 dated on 29.12.2012 was not discussed with the public. All following actions of the state authorities are based on this document, and the construction is presented to the public as a decided question. Moreover, despite of the fact that the project is still not agreed with all the authorities, construction works are already started on the territory of the national park.

Thus, not only the requirements of the Article 7, but also the paragraphs 2, 6, 7, 9 of the Article 6 were violated, which was stated in the decision V/9i by the 5<sup>th</sup> Meeting of the Parties of the Convention.

1.2. In the letter, **none of the mentioned facts have anything to do with the essence of the public statement No. ACCC/C/2013/88** (hereafter – Statement).

The first part of the letter of the Ministry talks about conducted hearings **on preliminary Environmental Impact Assessment of the project of mountain ski resort “Kokzhailau”**. A **plan of construction of the mountain ski resort “Kokzhailau”** was discussed at a talk-show (it is unclear why the show is mentioned, as it does not carry a juridical force) and at civil hearings. Lawsuit of the Ecological Society “Green Salvatoin” was filed with a purpose to cancel the **conclusion of the state environmental assessment of the materials of the preliminary Environmental Assessment of the mountain ski resort “Kokzhailau”**.

At the same time, the Statement of the public talks about **a necessity to conduct public hearings on the “Plan of development of mountain ski resorts of a world class in Almaty oblast and near the city of Almaty”** adopted by the Decree No.1761 of the Government of the RK dated on 29.12.2012. In other words, the letter of the MEWR talks about documents which are irrelevant to the statement of the public.

The second part of the letter of the MEWR basically talks about existing mechanisms of discussing of projects of normative acts, and not about existing mechanisms of discussing plans and programs related to the environment.

The letter does not explain the viewpoint of the Ministry of Industry and New Technologies (MINT) which groundlessly made a conclusion that “the plan approved by the Decree No.1761 of the Government of the RK is not an object of the state environmental assessment and therefore, does not require discussion with the public” (Letter of the MINT, No.16-06/2-6963//11-23/H-284 dated on 07.03.2013).

Besides, the letter does not indicate the fact that a month after the submission by the public of the Statement to the Committee, the Environmental Code of the RK was introduced amendments (by the Law of the RK dated on 03.07.12 No.124-V). In particular, as a result of these changes, the Article 47 “Objects of the state environmental assessment” was excluded a paragraph 1.2 which stated that “...the following objects are subjected to an obligatory state environmental assessment:

...  
2) projects of state, branch industries, and regional programs with accompanying materials of environmental impact assessment”.

Exclusion of this paragraph from the Environmental Code created one more contradiction between the Environmental Code and the requirements of the Aarhus Convention.

Besides, the Article 7 of the Convention does not specify that public participation is limited to specially created structures similar to public councils mentioned in the letter of the Ministry.

Once again, we emphasize that the letter of the MEWR does not contain information **related to the key points** of the statement from the public No.ACCC/C/2013/88.

## 2. Regarding the situation with access to a process of decision making and justice in the matter of construction of the mountain ski resort “Kokzhailau”.

State authorities do not undertake efficient measures to provide effective public participation in a decision making process. In reverse, they strive to neutralize public activity.

Due to the fact that the public does not have a real opportunity to participate in the decision making process, the ES tries to appeal the actions of the state officials in court.

But appealing actions or lack of actions of the state officials in courts is extremely difficult, as “the independence of the judiciary is constrained by the influence of the executive, and corruption is evident throughout the judicial system”<sup>2</sup>.

Experience of our organization and representatives of the public with addressing courts in relation to the public’s removal from the decision making process on construction of the mountain ski resort Kokzhailau clearly proves the above stated.

**On June 3, 2013**, a statement was filed to the Specialized Inter-regional Economic Court (SIEC) of the city of Astana about the MEWR’s failure to follow its responsibilities on utilization of the state property for the wellbeing of the society and failure to control the integrity of Ile-Alatau National Park. The statement was not accepted, as if the court did not have a jurisdiction over the case. Yessil District Court of the city of Astana did not accept the statement either, as if of incorrect presentation of the papers and incorrect determination of jurisdiction. With all of this, the courts of the first instance violated several times the paragraph 2 of the Article 30 of the Civil Procedural Code of the RK about forwarding a case from one court to another. The Court of the city of Astana, in violation of the paragraph 4 of the Article 30 of the Civil Procedural Code of the RK, refused to determine the jurisdiction of the case in return to a statement of ES dated on February 12, 2014. And only on **July 1, 2014 (i.e. more than a year later)**, after the third statement of the ES to the Court of the city of Astana, the court determined that the case is under jurisdiction of the SIEC. In this regards, a letter was sent to the chairman of the Supreme Court on **August 1, 2014**. The reply of the Supreme Court was that the actions of the courts were within the limits of the law<sup>3</sup>!

**On October 7, 2013**, a lawsuit about acknowledging being invalid of the state environmental assessment’s conclusion on the materials of preliminary Environmental Assessment for the project of the mountain ski resort “Kokzhailau” was filed to a court. The SIEC of the city of Almaty, the

Appeal and Cassation Boards refused to satisfy the lawsuit demands. At the present time, an appeal to the Supreme Court is being prepared.

**On April 2, 2014**, a statement was filed to a court about acknowledging being invalid of the public hearings regarding the materials of feasibility study of withdrawal of lands of Ile-Alatau National Park to the lands of reserve for construction of a mountain ski resort “Kokzhailau”. The statement was not accepted for consideration because, in the court’s opinion, “it cannot be reviewed and solved in the order of civil legal proceedings, because the public hearings and protocol disputed by the claimants do not cause any juridical consequences”.

Besides, in 2014, public representatives with a support of the ES filed two more lawsuits to courts. The first lawsuit was not accepted for consideration, as if the papers were performed incorrectly.

The second lawsuit about failure to provide environmental information – feasibility study of the mountain ski resort “Kokzhailau” by the Department of tourism of the city of Almaty and violation of rights and lawful interests guaranteed by the Aarhus Convention and the national legislation – was filed on June 11, 2014 by S.Solyanik. A judge of a district court made a decision to refuse the lawsuit demands.

The “failures” of the public in the courts do not mean that their demands contradict the law at all. In all of the cases, the courts allowed random interpretation of the legislation and violation of material and procedural law.

Obstacles appeared when the public tried to address the courts and the decisions of the courts allow making a conclusion about a collusion between executive and judicial branches, and that the actions of the courts are intentionally directed to create obstacles for access to justice.

The ES fully agrees with the opinion of the EBRR that “the judiciary’s inadequate level of independence undermines their ability to exercise an oversight of the executive”. The courts are unable to fight corruption. “A major problem affecting the success of the anti-corruption efforts is the lack of independence of the judiciary.”<sup>4</sup>

### 3. Regarding the position of the government and MEWR on the matter of preserving of national parks.

Position of the government and MEWR is characterized by an unsystematic approach, inconsistency, and contradiction which are the main reasons for the public protests.

In the Fifth National Report of the RK (2014) prepared by the MEWR following the requirement of the Convention on Biological Diversity, it is partially admitted that the legislation of the RK includes norms which promote destruction of specially protected natural territories and, at the same time, obstruct compliance with the requirements of the Convention on biodiversity. At the same time, as a continuing negative stimulus, it should be noted that there is an existing opportunity of withdrawal of lands of specially protected natural territories (SPNT) for construction of tourism facilities. This opportunity was created in 2008, and the life experience demonstrated that it brings serious risks to integrity of SPNT system of the country, especially near large cities with very high cost of land”. And further on, it is said that the amendments introduced into the legislation in July 2013, create “ground for uncoordinated actions of state authorities, oblast akimats, and national companies in the matter of withdrawal of lands of SPNT. This starts to really threaten the system of SPNT of the country, and at the present time, a question about changing this article of the Law is being discussed.

An example of such threat – conducted in 2013 procedures on withdrawal of 1000 hectares of lands from Ile-Alatau SPNT (which included in the tentative list of sites of the UNESCO World Heritage List) for construction of a mountain ski resort “Kokzhailau”, according to the local plans of akimat of the city of Almaty. To withdraw the lands, first, zoning of the SPNT was changed to transfer a part of this area from a zone of “ecological stabilization” into a zone of “limited economic use”, explaining this transfer solely by the necessity of construction of the resort. Thus, imperfection of the legislative base allows in the same manner to withdraw any piece of land wanted for privatization from any national park. This situation must be changed”.<sup>5</sup>

Indeed, the amendments to the Law “About SPNT” were prepared and will be submitted for consideration by the Parliament, probably, in the fall of this year. But even in case of their adoption, the situation will not improve, because the amendments will not eliminate the main contradictions in the legislation which allow destruction of the system of SPNT and removal of the public from the decision making process.

Apart from development of the amendments, the MEWR did not undertake any real actions, in order to prevent the illegal construction on the territories dependent on it. As a result, as noted above, in August 2014, despite of the fact that the project of the construction is still not approved, the city officials started construction works which caused new public protests<sup>6</sup>.

On August 6, 2014, a Decree of the President “About reformation of the system of the state governing of the Republic of Kazakhstan” eliminated the MEWR. Its functions were partially given to the Ministry of Energy, partially, to the Ministry of Agriculture. Once again, SPNT will be transferred from one establishment to another, which most likely will not promote lawfulness and bringing things in the right order.

### Ecological Society “Green Salvation”

August 27, 2014.

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<sup>1</sup> Letter of the Ecological Society “Green Salvation” to the Aarhus Convention Compliance Committee dated on November 9, 2007 (Outgoing No.140).

<sup>2</sup> Strategy for Kazakhstan. European Bank for Reconstruction and Development: <http://www.ebrd.com/downloads/country/strategy/kazakhstan-strategy-2013.pdf>, December 17, 2013, p.34.

<sup>3</sup> Letter of the Supreme Court on August 14, 2014, № 3-1-6/6232.

<sup>4</sup> Same as above, p.34, 35.

<sup>5</sup> Website of the Convention on Biological Diversity. Fifth National Report of the Republic of Kazakhstan about biological diversity, 2014, p.8, 97, 113: <http://www.cbd.int/doc/world/kz/kz-nr-05-ru.pdf>.

<sup>6</sup> [https://www.facebook.com/groups/kokzhaylyau/527385194027632/?notif\\_t=group\\_activity](https://www.facebook.com/groups/kokzhaylyau/527385194027632/?notif_t=group_activity).