

Respected Chairperson, respected members of the committee and meeting participants:

The communication of civil society ACCC/C/2013/88 involves the Republic of Kazakhstan's violations of the Aarhus Convention with regard to public participation in decision-making regarding the construction of the mountain ski resort, Kok Zhailau on the territory of the Ile-Alatau National Park near the city of Almaty. It relates to violations of the rights of the public to participate in decision-making on the strategic level and within the evaluation of a specific project.

First of all, Kazakhstan has no procedure for public participation, in accordance with Article 7 of the Aarhus Convention, as there is no strategic environmental assessment; that is, environmental assessment with regard to plans, programs and policies. However, according to the current legislation individuals and associations are entitled to participate in the preparation of plans and programs relating to the environment, according to paragraph 9 of Article 13 and paragraph 10 of Article 14 of the Environmental Code. Furthermore, earlier Sub-point 2, Point 1 of Article 47 of the Environmental Code required that projects of state, sectoral and regional programs and their environmental impact assessment materials must undergo a state environmental impact assessment. However, this situation was excluded from the Environmental Code in accordance with the June 3, 2013 Law of the Republic of Kazakhstan, No. 124-V. In this way, at the present time, even the legislative basis for public participation in the process of decision-making of state programs has been dissolved.

Presently, the Akimat of the city of Almaty is planning to realize a construction project for the downhill ski resort in the tract of Kok Zhailau, which is located on the territory of the Ile-Alatau National Park. The choice of the area under construction was taken without considering the opinion of the public, which did not participate in the discussion of the "Plan for the development of the world class downhill ski resort in Almaty Oblast in the proximity of the city of Almaty," which was confirmed by the Resolution of the government of the Republic of Kazakhstan No. 1761, December 29, 2012. However, in its appeal to the Prime Minister of the Republic of Kazakhstan from February 4, 2013, civil society (with 358 individual signatures) raised the question of the need to discuss the plan as a strategic document, which could have significant impact on the environment. However, the Ministry of Industry and New Technology of the Government of the Republic of Kazakhstan responded in letter No. 16-06/2-6963//11-23/N-284 from March 7, 2013 that the current plan was not the object of a State Ecological Expertise and thus, did not demand discussion with the public.

It is necessary to make note of the fact that the downhill ski resort, Kok Zhailau is a part of the city of Almaty's application to hold the Winter Olympics in 2022. At the present time only two cities are candidates to hold those Olympics: Almaty and Beijing. Plans to hold the Winter Olympics have never been discussed with civil society of the city or the country within any sort of official decision-making procedure. Together with the plans for the construction of the downhill ski resort at Kok Zhailau, holding the Winter Olympics in Almaty is a question that has seriously concerned the residents of the city for the past several years.

Such projects as the construction of the downhill ski resort Kok Zhailau are ineffectively discussed with the public and limit the procedures for participation in the evaluation of environmental impact in accordance with Article 6 of the Aarhus Convention. First, in the case of Kok Zhailau, the authorities selected the construction site without public participation. They did not discuss alternative sites for construction and the possibility to reject the construction, which was particularly important if the city is also selected as the site for the Winter Olympics. As a result, in discussions about the Kok Zhailau project the public did not have the opportunity to impact on the moving of the planned project to a different site, and also on its size and

characteristics. In these conditions, public participation in the discussion of the project and the evaluation of its environmental impact without public participation was not only ineffective, but it was also formal. Therefore, we believe that the procedure for public discussion of the project Kok Zhailau was initiated after the location for construction had already been selected by the Akimat of Almaty, without discussing the plan for the development of the downhill ski resort near the city of Almaty and the proposed areas for its development with the interested public. This was a violation of Article 7 of the Aarhus Convention on the participation of the public in deciding questions that involve plans, programs and policies related to the environment.

With regard to the failure to adhere to Point 3, Article 6 of the Convention in the context of violating Article 7 of the Convention, it is necessary to point out that in this situation there are not different stages of decision-making, including strategic decisions about a specific project. From the beginning the city's civil society should have had the opportunity to discuss the following aspects: the necessity for additional downhill ski resorts and holding the Olympics; the possibility to build those objects in a different location. And only then should there be the discussion of the possible environmental impacts from the construction of the downhill ski resort in this specific place. Accordingly, the absence of the public participation in decision-making at the strategic level is a violation of the rights of the public and Article 7 of the Convention.

With regard to the failure to observe Point 4, Article 6 of the Convention in the context of the existence of requirements according to Article 7 of the Convention. The public is not involved in the earliest stages of decision-making on many projects. With regard to Kok Zhailau, public discussion was started after Almaty city authorities had already independently decided where the construction would take place, without discussing alternatives with the public, which had been selected in accordance with the evaluation that was conducted by the Ministry of Industry and New Technologies, and determined by them in a letter from March 7, 2013. Presently in the tract of Kok Zhailau, a substation is already being build and a power line exists.

Regarding the failure to comply with Point 8, Article 6 of the Convention in the context of realizing Article 7 of the Convention: The programs and plans for environmental protection are not discussed with the public in the Republic of Kazakhstan in accordance with the terms of Article 7 of the Aarhus Convention, and the results of public participation are not reflected in the documents. An example is the "Plan for the development of the world class downhill ski resorts in Almaty District near the city of Almaty," which is determined in the Resolution of the Government of Kazakhstan No. 1761 from December 29, 2012: Without taking into consideration public opinion, the authorities of the city of Almaty selected a location for construction of the downhill ski resort, Kok Zhailau, thereby triggering a sharp social-environmental conflict with the residents of the city. They failed to consider public opinion, which was that that object should not be constructed in the tract of Kok Zhailau because it would be located on the territory of a national park; that it would increase the negative impact on the environment, which already is felt from already existing ski resorts around Almaty; that the construction could be moved to another location outside the borders of the national park, decreasing the environmental impact. Without the participation of the public in decision-making, in accordance with Article 7 of the Convention, there are no public opinion about the "zero" alternative or other areas for construction.

Summarizing what has been said, at the present time, there is no existing practice of public participation in the discussion of plans and programs involving questions related to the environment as well as normative legal documents in the national law, which would regulate the procedure for public participation in decision-making on this issue. Additionally, the legislation does not have a procedure for strategic environmental assessment for policies, programs and plans. For example, this understanding does not exist in the Ecological code and other

normative-legal documents. As a result, public participation in the discussion of possible impacts on the environment, as provided by Article 7 of the Convention, is also missing in cases where these decisions are made.

With regard to the response of the Ministry of Environment and Water Resources of Kazakhstan to the Committee on April 3, 2013, where it refers to the participation of business associations in the existence of environmental impact assessments of projects of normative-legal acts. This participation is regulated by the law, "On private enterprise," (Point 2 Article 5) and is connected only with the protection of economic interests of business owners. It has no relationship to the procedure of public participation in relationship to Articles 7 and 8 of the Aarhus Convention.

In addition to the provisions of Points 3, 4 and 8 of Article 6 which shall be applied in the framework of Article 7 of the Aarhus Convention while making the decisions on the construction of the ski resort on Kok Zhailau a number of other provisions of Article 6 were violated. First, the notification on public hearings as 27 December 2012 did not contain the information on:

- the public authorities responsible for making decisions on this project;
- the address and timeframes for sending comments and questions;
- whether the project is a subject to a trans-boundary environmental impact assessment procedure, since the proposed site is in close vicinity to the Kazak-Kyrgyz border.

The period from the date of public notice until the date of public hearings was 14 calendar days and 7 of them were either holidays or weekends. Therefore, the public notice of the public concerned was inadequate, not timely and ineffective and it constitutes the violation of the Point 2 of Article 6 of the Convention.

Their organizers of the public hearings on preliminary environmental impact assessment did not provide access to the public to its materials, including available at that time 2 volumes of the preliminary environmental impact assessment documentation and resume of the feasibility studies of the project. All of them dated 2012. Access to the documents was provided by the NGO "Green Salvation" 3 days prior the date of the hearings while the web site of the Department of Tourism of Almaty had not been working. In our opinion, it was a clear violation of the Point 3 of Article 6 of the Convention.

40 minutes prior the commencement of the hearings the entrance door to the venue was closed and access for the public was restricted by the police. Only after a scandal with the involvement of the mass media those who were not permitted entrance could enter the room where the hearing took place. As a result not all participants in the hearing were registered, included into the minutes and thus to present their comments and express their opinions. In our opinion, it was a clear violation of the Point 7 of Article 6 of the Convention.

To conclude on the procedure of decision-making on preliminary environmental impact assessment we should mention that positive conclusion of state ecological expertise were issued by the Almaty Department of Natural Resources and Regulation of Nature Use on 13 April 2013. This decision was taken with a number of violations of Article 6 of the Convention during this process no alternatives to this project were considered.

In addition to the information provided in our communication it needs to be mentioned that two important decision-making processes took place after its submission to the Committee.

It concerns the feasibility study of the transfer of land plot of the Ile Alatau national park for the construction of the ski resort on Kok Zhailau. The public hearings on this issue took place on 25 February 2014 at the ski resort "Shymbylak". They were conducted quite far from the city and it has hindered access for the public to the venue of the hearings. On 2 December 2014 the

Government made the decision on the transfer of 1002 hectares of the Ile Alatau national park for the project Kok Zhailau.

On 5 May 2014 the public hearings on environmental impact assessment of the construction of the ski resort Kok Zhailau were held. On 31 July 2014 positive conclusion of state ecological expertise was issued on the EIA documentation. During the public participation processes on the project of construction of the ski resort on Kok Zhailau comments and opinions from the public was gathered only at public hearings. The evidences of it can be found on the web site of the Almaty Department of Tourism <http://almatytourism.kz/index.php/ru/proekt-gorno-lyzhnogo-kurorta-kok-zhajlyau>. Also we would like to stress that in principle no alternatives to this project can be considered at the stages of environmental impact assessment and feasibility study of the transfer of the land plot for the project.

Regarding the certain violations of the Convention during the decision-making processes on Article 6 and outside of the strategic decision-making on the construction of the ski resort on Kok Zhailau they are absolutely the same as already established by the Compliance Committee in relation to Kazakhstan on the communication ACCC/C/2010/59. Thus, we are suggesting reflecting them in the context of the implementation of the relevant Committee's recommendations on the earlier case, in particular in its annual report.

Available domestic legal remedies are used by the NGO "Green Salvation" and members of the public to protect public environmental rights. However it seems to us that it is not necessary to take them into account in this case and we do not touch upon this issue in the presentation. It is enough to mention that in the response of the Committee as of 6 April 2014 the Ministry of Environment and Water Resources indicated that the NGO "Green Salvation" was denied access to justice in relation to the positive conclusion of state ecological expertise on preliminary environmental impact assessment of this project.

Considering the facts of violations of Article 7 of the Convention and taking into account that the project Kok Zhailau is part of the application for the Olympics, we request that the Compliance Committee make its findings and recommendations with regard to compliance of the Convention for the Republic of Kazakhstan before July 2015, so that they can be determined prior to the decision-making of the International Olympic Committee on the location of the 2022 Winter Olympic games.

Sergey Solyanik, on behalf of communicants of ACCC/C/2013/88

18 December, 2014, Geneva