

Comments to the first report of Kazakhstan on implementation of the Decision VI/8g

Comments of the Ecological Society “Green Salvation” to the first report of the Republic of Kazakhstan (RK) on implementation of the Decision VI/8g¹ on compliance by Kazakhstan with its obligations under the Convention in the Draft Law “On introduction of amendments to certain legal acts of the Republic of Kazakhstan on environmental matters” (hereafter – the Report).

1. The Report states:

“In order to implement the recommendations of the Decision VI/8g of the Sixth Meeting of the Parties of the Aarhus Convention, the following work on improving the legislation has been conducted.”

All references presented in the Report describe actions, which had been undertaken by the Party of the Convention before the Sixth Meeting of the Parties of the Aarhus Convention, i.e. before the Decision VI/8g was made (September 11-13, 2017).

This means that, firstly, the Party of the Convention officially admits that after the Decision VI/8g was made (September 11-13, 2017) and up until the present moment, no actions have been undertaken for changing and amending the legal acts, in accordance with the Decision of the Meeting of the Parties. Secondly, the Report demonstrates a perfunctory attitude of the Party of the Convention to the implementation of the Aarhus Convention.

2. The Report does not mention that **“access to all information related to decision-making process”** (paragraph 6, Article 6) is still not secured in the legislation of the RK.

The Report refers to the paragraph 3 of the Article 57-2 of the Environmental Code: “Twenty days prior to conducting of public hearings, local executive authorities provide an open access to environmental information **related to the procedure of environmental impact assessment of a proposed economic or another activity, and to the process of decision making on this activity** through an Internet source, and using other means of informing”. This wording is repeated in the paragraph 12 of the “Rules of conducting of Public Hearings”². This wording allows for arbitrary interpretation of the law.

A vivid example of an arbitrary interpretation is a reply of the Department of Tourism and External Relationships of the city of Almaty dated on October 10, 2018, No. 05-04/3T-K-52, to the inquiry of the Ecological Society “Green Salvation”. The Ecological Society in their letter requested to provide all “parts of the draft of the “Feasibility study of construction of the mountain ski resort “Kokzhailau””.

In the reply of the Department of Tourism and External Relationships of the city of Almaty, it is said:

“After considering your inquiry, the Department of Tourism and External Relationships of the city of Almaty reports the following.

In accordance with the requirement of the Article 57-2 “Conducting of public hearings” of the Environmental Code of the Republic of Kazakhstan, “Twenty days prior to conducting of public hearings, local executive authorities provide an open access to environmental information related to the procedure of environmental impact assessment of a proposed economic or another activity, and to the process of decision making on this activity through an Internet source, and using other means of informing”, environmental information, in particular the Book 1 and Book 2 of the Section “Preliminary Environmental Impact Assessment” (hereafter – PreEIA) of the feasibility study of the mountain resort “Kokzhailau” are published on the “Kokzhailau” website www.kokzhailau.kz and the website of the Department of Tourism and External Relationships of the city of Almaty www.almatytourism.kz on September 19, 2018, and September 27, 2018, correspondingly.

In order to protect lawful economic interests in accordance with the paragraph 4 of the Article 4 of the Aarhus Convention and legislation of the Republic of Kazakhstan, a request to provide

environmental information can be denied, if disclosure of such information negatively affects confidentiality of commercial information.

While the information about emissions related to environmental protection is subjected to disclosure (PreEIA).

No other materials regarding the feasibility study are planned to be published in future, since it is not provided for by the current legislation and the Environmental Code of the RK”.

A similar response (outgoing No.160 dated on October 1, 2018) was received by the Ecological Society from the head of the Almaty Mountain Resorts.

Thus, the Department of Tourism and External Relationships of the city of Almaty which is a structural sub-department of the local executive authority (akimat) not only allowed for arbitrary interpretation of the law, but violated norms of the Aarhus Convention.

On February 18, 2005, the Aarhus Convention Compliance Committee made conclusions and recommendations based on the statement from the Ecological Society “Green Salvation”. Paragraph 18 of the above mentioned document states: “Information requested from “Kazatomprom” company, in particular, the feasibility study of the draft of amendments, fits the description contained in the paragraph 3 b) of the Article 2 of the Convention”³.

Conclusion. The Ecological Society “Green Salvation” considers that the first report of the Republic of Kazakhstan on implementation of the Decision VI/8g confirms a perfunctory attitude of the Party of the Convention to the implementation of their obligations and does not reflect the real situation with implementation of the Aarhus Convention in the country.

On behalf of the Ecological Society “Green Salvation”,
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October 31, 2018.

¹ First progress report on the implementation of decision VI/8g: <http://www.unece.org/environmental-policy/conventions/public-participation/aarhus-convention/tfwg/envppcc/implementation-of-decisions-of-the-meeting-of-the-parties-on-compliance-by-individual-parties/sixth-meeting-of-the-parties-2017/kazakhstan-decision-vi8g.html>

² Decree of the Minister of Environmental Protection of the Republic of Kazakhstan dated on May 7, 2007, No.135-p “On Approval of Rules of Conducting of Public Hearings” (with changes and amendments as of September 8, 2017).

³ Findings and recommendations regarding compliance by Kazakhstan with its obligations under Aarhus Convention in the case about information requested from “Kazatomprom” company (Statement ACCC/C/2004/01 of the Ecological Society “Green Salvation” (Kazakhstan)):

<http://www.unece.org/fileadmin/DAM/env/documents/2005/pp/c.1/ece.mp.pp.c1.2005.2.Add.1.r.pdf>