



# Economic and Social Council

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## Economic Commission for Europe

### Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters

#### Sixth session

Budva, Montenegro, 11–13 September 2017

Item 7 (b) of the provisional agenda

#### **Procedures and mechanisms facilitating the implementation of the Convention: compliance mechanism**

## **Draft decision VI/8g concerning compliance by Kazakhstan with its obligations under the Convention**

### **Prepared by the Bureau**

*The Meeting of the Parties,*

*Acting* under paragraph 37 of the annex to its decision I/7 on the review of compliance (ECE/MP.PP/2/Add.8),

*Mindful* of the conclusions and recommendations set out in its decision V/9i with regard to compliance by Kazakhstan (see ECE/MP.PP/2014/Add.1),

*Taking note* of the report of the Compliance Committee under the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters on the implementation of decision V/9i concerning compliance by Kazakhstan with its obligations under the Convention (ECE/MP.PP/2017/41), and the findings of the Committee on communication ACCC/C/2013/88 (ECE/MP.PP/C.1/2017/12, forthcoming) concerning public participation in decision-making regarding the construction of a ski resort,

*Encouraged* by the willingness of Kazakhstan to discuss in a constructive manner with the Committee the compliance issues in question,

1. *Endorses* the findings of the Committee that:

(a) The Party concerned has met the requirements of paragraph 7 (a) of decision V/9i with respect to the introduction of a mandatory obligation to inform the public in a

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timely manner of decision-making on activities subject to article 6, paragraph 1, of the Convention and detailing the means of public notice, but not yet with respect to the mandatory content of the public notice or the requirement to ensure that the public authority competent for the decision-making on such activities gives the public concerned access to all information relevant to the decision-making;

(b) The Party concerned has fulfilled some of the requirements of paragraph 7 (b) of decision V/9i by removing the obligation for comments to be reasoned and allowing the public to submit comments on the OVOS report and other project-related documentation, but has not yet fulfilled all the requirements of that paragraph by failing to eliminate the stipulation that comments must be “reasonable”;

(c) The Party concerned has not yet met the requirement in paragraph 7 (c) (i) of decision V/9i to take the necessary measures to ensure that the relevant public authorities inform the public promptly of the decisions taken and how the text of the decisions can be accessed, nor the requirement in paragraph 7 (c) (ii) to maintain publicly accessible lists or registers of the decisions taken;

2. *Reaffirms* decision V/9i and requests the Party concerned to take the necessary legislative, regulatory and administrative measures:

(a) To ensure that the mandatory requirements of the content of the public notice, as prescribed by article 6, paragraph 2, of the Convention, are detailed in law;

(b) To establish a clear and consistent requirement for all information relevant to the decision-making to be made accessible to the public, in accordance with article 6, paragraph 6, of the Convention;

(c) To ensure that, in accordance with article 6, paragraph 7, of the Convention, the submission of comments by the public is not limited to only “reasonable” comments;

(d) To establish appropriate procedures, which are not limited to publishing decisions only on websites, to promptly notify the public of the environmental *expertiza* conclusions, and to facilitate public access to these decisions, in accordance with article 6, paragraph 9, of the Convention;

(e) To maintain and make accessible to the public, through publicly available lists or registers, copies of the decisions taken and other information relevant to the decision-making, including evidence of having fulfilled the obligation to inform the public and provide it with opportunities to submit comments;

3. *Endorses* the following findings of the Committee with regard to communication ACCC/C/2013/88:

(a) By failing to ensure that its legal framework ensures that the public concerned is informed in an adequate, timely and effective manner of all matters listed in article 6, paragraph 2 (a)-(e), of the Convention, the Party concerned has failed to comply with article 6, paragraph 2, of the Convention both with respect to its current legislation and regarding the public participation procedure on the Kok Zhailau ski resort in particular;

(b) By failing to ensure a sufficient time frame for the public to prepare and participate effectively during the environmental decision-making on the Kok Zhailau ski resort, the Party concerned failed to comply with article 6, paragraph 3, of the Convention;

(c) By failing to set out clear requirements in its legal framework for due account to be taken of the outcomes of public participation in decision-making within the scope of articles 6 and 7 of the Convention, the Party concerned fails to comply with article 6, paragraph 8, and article 7 in conjunction with article 6, paragraph 8, of the Convention;

(d) By failing to make appropriate practical and/or other provisions for the public to participate during the preparation of plans, programmes and policies relating to the environment, the Party concerned has failed to comply with article 7 of the Convention in general;

(e) By failing to provide for early and effective public participation on the “Plan to Develop World-Class Ski Resorts in Almaty Region and near Almaty”, the Party concerned has failed to comply with article 7 in conjunction with article 6, paragraphs 3, 4 and 8, of the Convention;

4. *Welcomes* the recommendation made by the Committee during the intersessional period with respect to its findings on communication ACCC/C/2013/88 in accordance with paragraph 36 (b) of the annex to decision I/7;

5. *Also welcomes* the willingness of the Party concerned to accept the Committee’s recommendation, namely, that the Party concerned take the necessary legislative, regulatory and administrative measures and practical arrangements to ensure that:

(a) The content of the public notice prescribed by the Rules of Public Hearings meets all the requirements set out in article 6, paragraph 2, of the Convention;

(b) Time frames set for decision-making procedures subject to articles 6 or 7 of the Convention are sufficient to enable the public to prepare and to participate effectively and:

(i) To the extent possible, they do not overlap with holiday periods and other non-working days;

(ii) The volume and the complexity of the project or plan, programme or policy is considered when setting the relevant time frames;

(c) Appropriate practical and/or other provisions are made for the public to participate during the preparation of plans within the scope of article 7 of the Convention, including clear requirements to ensure that:

(i) The necessary information is provided to the public;

(ii) The public that may participate is identified by the relevant public authority;

(iii) The requirements of article 6, paragraphs 3, 4, and 8, of the Convention are applied;

6. *Requests* the Party concerned:

(a) To submit to the Committee detailed progress reports on 1 October 2018, 1 October 2019 and 1 October 2020 on the measures taken and the results achieved in the implementation of the above recommendations;

(b) To provide such further information as the Committee may request in order to assist it to review the progress of the Party concerned in implementing the above recommendations;

(c) To participate (either in person or by audio conference) in the meetings of the Committee at which the progress of the Party concerned in implementing the above recommendations is to be considered;

7. *Undertakes* to review the situation at its seventh session.