

## **Comments on the draft findings and recommendations on the application ACCC / C / 2013/88 concerning compliance by Kazakhstan to the Aarhus Convention**

1. **On paragraphs 49, 50, 51, 52, 53, 54, 55, 56, 57** we inform that the applicant at the request of the Ministry of Energy has provided legal materials on various aspects of judicial practice on the issue of the construction of the ski resort "Kok - Zhaylau". The statement of claim (complaint) of Ecological Society "Green Salvation" directed to the national judicial authorities **does not refer to violations of the Aarhus Convention**, and the only reference to national law. While the Ecological Society "Green Salvation" has sent to the Compliance Committee arguments with a clear indication of the items of the Aarhus Convention, which in their opinion, have been violated.

According to the Almaty city administration provision of information to the public and organization of public hearings were provided in strict accordance with the requirements of the Aarhus Convention within its competence and in accordance with the legislation of the Republic of Kazakhstan in effect at that time, confirmed by court rulings of the various authorities in favor of Akimat and Division of Tourism of Almaty city.

Also, we support the position of the Committee referred to in paragraph 93, that all domestic remedies related to decision-making must be generally clarified before the application is submitted to the Committee.

Law enforcement practice on the construction of the ski resort "Kok Zhaylau" requires a comprehensive study together with the Supreme Court, national and international experts in the field of environmental law and civil law.

2. One of the issues considered at contest of the state environmental review on November 25, 2013 was holding public hearings. **On paragraphs 61, 62 and 63** we report that, according to the norms of applicable national law, at the time of January 11, 2013 **the Rules for public hearings in the wording of the order of the Minister of Environment of the Republic of Kazakhstan on 02.04.2012 № 88 -Ө were acted, which did not include requirements to term of public awareness (term of publication of the announcement), to form of the announcement content and to publication in the announcement venue of the public hearing.** Accordingly, there were no violations of the national legislation at the time of 11 January 2013.

The norm to publish announcement no later than twenty days prior to the public hearings was introduced by Rules in the wording of the order of the Minister of Environment Protection of RK **on 26.03.2013 № 50 -Ө.**

Please be informed that the recent changes are made by order of the Minister of Energy of the Republic of Kazakhstan on 21.06.2016 №260.

**4. On paragraph 64** we inform that according to the Division of Tourism of Almaty city information about the project was given to representative of ES "Green Salvation" on CD disks including:

- The project "Preliminary environmental impact assessment of construction of ski resort "Kok Zhaylau";
- Summary of the Feasibility study for the construction of ski resort "Kok Zhaylau";
- The project "Feasibility study of the transfer of lands of specially protected natural territories of the Ile-Alatau State National Natural Park in reserve lands for the construction of the ski resort "Kok Zhaylau" (Pre-EIA, EIA);
- The project "Environmental impact assessment of the ski resort "Kok Zhaylau".

On paragraphs 68, 69 be informed that according to the Akimat of Almaty, at the public hearings **audio recording was conducted** on which the Protocols of public hearings were compiled. Audio and other materials relating to public participation in decision-making on the project "Kokzhaylau" are open to all interested parties and the Akimat of Almaty city is ready to provide them to the Committee, if necessary.

**On paragraph 73.** In order to participate in the public hearing in the ski resort Shymbulak Akimat of Almaty city organized free bus route to the gondola station Medeo, and then free for public gondola lifts to Shymbulak.

Everyone who came to the public hearing have been registered. At the hearing an opportunity to speak was given to S. Kuratov, M. Yeleussizov and other representatives of public.

At the end of the period for acceptance of comments and suggestions on the Protocols, comments and suggestions were accepted for consideration in accordance with the annex to the Rules of the public hearings. There are conclusions in Protocols. In addition to the Protocols Applications were made - Summary tables of questions, observations and comments on the results of public hearings hosted in the media, on the Internet resources. This table also was posted on the Internet resource of Division of Tourism of Almaty city.

Comments and suggestions to the Protocols relevant to current legislation of the Republic of Kazakhstan are accepted and taken into account by developers of projects.

**5. On paragraph 132** we offer to review the findings of the Committee in connection with the fact that Kazakhstan is not a party to the Protocol on Strategic Environmental Assessment (hereinafter - SEA), respectively there are no legal framework for the application of the SEA procedure for plans and programs on environmental protection. Accordingly, we believe that it is not valid to consider the links provided by SEA, in particular paragraphs 84, 117 and 126.

In addition, in accordance with Article 47 of the Environmental Code draft normative legal acts of the Republic of Kazakhstan, normative-technical and instructional methodology, documentation which implementation could lead to negative impacts on the environment, are subject to the state ecological expertise.

To implement state programs their action plan are developed and approved by regulatory legal act.

6. We note that changes in the Environmental and Tax Codes on issues of Aarhus Convention are made by Law of the Republic of Kazakhstan "On amendments and additions to some legislative acts of Kazakhstan on environmental issues" on April 8, 2016, in particular:

1) The list of projects, materials are subject to the imposition of a public hearing, which takes into account the Annex 1 of the Aarhus Convention is approved.

2) Conclusions of the state ecological expertise to be now published on the website of the local executive authorities within five days of receipt of their natural resource users;

3) Reports on emissions into the environment from large natural resources of the 1-st category (over two thousand) are publicly available, as well as data on their payments to the budget, checks of the state environmental control, environmental action plans and its execution (PRTR).

4) Annual National report on the state of environment and use of natural resources to be developed and published.

5) Persons and legal persons are exempt from payment of duty when submitting claims in court on environmental issues.

At the legislative level (Article 57-1 of the Environmental Code) a list of procedures for public participation in decision making on protection of environmental is defined. These procedures are:

1) public hearings;

2) public environmental review;

3) public ecological control;

4) submission of comments and suggestions to state authorities at carrying out the state ecological examination;

5) participation in public councils under state authorities;

**6) submission of comments and suggestions on the draft normative legal acts on environmental issues, including the draft documents of State planning system.**

National legislation stipulates that all plans, programs and policies, including those concerning environmental protection are developed in accordance with the Decree of the President of the Republic of Kazakhstan dated June 18, 2009 №827 "On the State planning system in the Republic of Kazakhstan" (hereinafter - the Decree). In accordance with paragraph 61 of the Decree the processes of State planning system include: development, approval, implementation, monitoring, evaluation, adjustment and control of the implementation of its documents.

In accordance with paragraph 62 of the Decree, participants in the processes of State planning system are public authorities, legal entities with state participation, **representatives of public, academic and private organizations, and individuals.**

All documents of State planning system (with the exception of Kazakhstan Development Strategy up to 2050) are the normative legal acts.

Public participation in the development of instruments of State planning system is regulated by the Law of the Republic of Kazakhstan from April 6, 2016 "On Legal Acts" (before Law of the Republic of Kazakhstan "On normative legal acts" on 6 April 2016).

The order of placement and public discussion of draft laws and normative legal acts is defined in the Rules of placement and public discussion of the drafts of concepts, laws and draft normative legal acts on the website of publically open normative legal acts, approved by order of the Minister of Information and Communications of the Republic of Kazakhstan dated June 30, 2016 №22 (hereinafter - Rules).

In accordance with the Rules on the Portal of "electronic government" draft normative legal acts (hereinafter - NLA) are posted together with explanatory notes and comparative tables in the Kazakh and Russian languages.

The period of public discussion of draft NLAs should not be less than ten working days from the date of their placement on the Portal. All comments and suggestions on the draft NLAs received are published in open access.

State authorities-developers of draft NLAs within three business days after the completion of public discussion consider the observations and (or) the public suggestions and make decisions on their acceptance or rejection with indicating the rationale. After that, state bodies prepare and publish a preliminary version of the report on the completion of the public discussion on the draft.

Within one working day after the publication of the draft report on the completion of the public discussion then public vote on draft NLA presented by state authority and comments and suggestions of public to be held.

After the voting state authorities-developers of drafts prepare and publish the final version of the report on the completion of public discussion.

This report contains the following information:

Structural part of the NLA to be commented;

Text of notes, and (or) a proposal from public;

Text of state authority's response;

Number of votes "for" and "against" on the draft NLA proposed by state authority-developer;

Number of votes "for" and "against" on the comments and suggestions of public on the draft NLA.

Additionally, in the annex, we have attached links, confirming discussion with public on plans, programs on environmental issues.

Thus, public participation in decision-making in the development of plans, programs and policies on environmental protection issues is not regulated by Article 57-2 of the Environmental Code "Public Hearings". At public hearing documentation on environmental impact assessment should be submitted, and that has been made on the construction of the ski resort "Kok Zhaylau".

Public participation in decision-making in the development of plans, programs and policies on environmental issues is regulated by:

- the seventh paragraph of Article 57-1 of the Environmental Code of the Republic of Kazakhstan;

- clause 62 of the Decree of the President of the Republic of Kazakhstan dated June 18, 2009 № 827 "On the of State planning system in the Republic of Kazakhstan";

- article 18 of the Law of the Republic of Kazakhstan "On Legal Acts";

- Rules of placement and public discussion of the drafts of concepts, laws and draft regulations on the website of publically open regulations, approved by order of the Minister of Information and Communications of the Republic of Kazakhstan.

Based on the above, we believe that the laws of the Republic of Kazakhstan **provides procedures for public participation** in the development of plans, programs, including for the environment protection that complies with the provisions of Articles 6 and 7 of the Aarhus Convention.

We ask the Committee to take into account the arguments presented above and to review the findings and recommendations in respect of the application ACCC / C / 2013/88 regarding compliance by Kazakhstan with the Aarhus Convention.

## Annex 2

### Links

1) The change in the Decree of the President on the special economic zone "Burabay" <https://legalacts.egov.kz/application/npa/70128/1>

2) On amendments and additions to the Decree "On the state program on water resources management" <https://legalacts.egov.kz/application/npa/13290/1>

3) On amendments to the Order of the Ministry of Agriculture of RK "On Approval of Rules on allocation of land to forest users for construction projects on the lands of the State Forest Fund, where forest resources are made available for long-term forest management for health, recreational, historical, cultural, tourist and sports purposes; hunting purposes; secondary forest use and permission to use these sites for the construction of such facilities <https://legalacts.egov.kz/application/npa/10287/1>

4) On amendments to the Decree of the Government of RK On approval of the Program for the development of agro-industrial complex in the Republic of Kazakhstan for 2013 - 2020 years "Agrobiznes-2020» <https://legalacts.egov.kz/application/npa/9987/1>

5) Draft Decree of the President of the RK "On changes in the boundaries of Astana city" <https://legalacts.egov.kz/application/npa/72015/1>

6) On amendments to the Decree of the Government of RK "On approval of the joint Action Plan of the Government of Kazakhstan and the National Bank of the Republic of Kazakhstan to ensure that measures for the financing, management, construction and sale of houses and the shopping center for the International specialized exhibition EXPO-2017 in Astana and introduction additions to the Decree of the Government of the Republic of Kazakhstan from January 15, 2013 № 10 "On approval of the National plan for the organization and holding of the International specialized exhibition EXPO - 2017 for 2013 - 2018" <https://legalacts.egov.kz/application/npa/8524/1>

7) news "Committee of tourism industry invites the public to discuss the concept of development of tourism industry of Kazakhstan <http://veters.kz/komitet-industrii-turizma-mint-rk-predlagaet-shirokoj-obshhestvennosti-dlya-obsuzhdeniya-koncepciyu-razvitiya-turisticheskoy-otrasli-rk/>

8) news "Committee of tourism industry of MINT of RK held a meeting of the working group on the expert assessment of Systemic plan of tourism development in RK" <http://visitkazakhstan.kz/ru/guide/news/view/4105/>