

## JUDGEMENT IN THE NAME OF THE REPUBLIC OF KAZAKHSTAN

Case 2-15084/13  
25 November 2013

Almaty

The Almaty Specialised Interdistrict Economic Court chaired by Judge G. N. Kazymbetova and having A. Nuranova as its secretary, with the participation of Y. Kim, prosecutor; S. G. Kuratov, chair of the Green Salvation Ecological Society (pursuant to its charter); S. F. Katorch, a representative of the plaintiff (under the power of attorney dated 16 January 2013); M. T. Batyrbayev, a representative of the defendant (under the power of attorney dated 24 October 2013), and M. Y. Novossyolov, a representative of the defendant (under the power of attorney dated 6 November 2013); and L. A. Burumbayeva, a representative of the Almaty Tourism Department (under the power of attorney dated 11 November 2013), a non-party intervener on the side of the defendant which does not file its own claims with respect to the subject matter of the dispute; having considered in an open court hearing at its premises a civil case initiated based on a claim filed by the Green Salvation Ecological Society against the Almaty Department for Natural Resources and Nature Use Management and the Tourism Department, a non-party intervener on the side of the defendant, which does not file its own claims with respect to the subject matter of the dispute, requesting to invalidate State Environmental Audit Report 07-08-133 dated 13 April 2013 with respect to the preliminary environmental impact assessment (EIA) documents included in the Feasibility Study for the Kok-Zhailau Ski Resort Project,

### FOUND OUT AS FOLLOWS:

The Green Salvation Ecological Society filed a claim against the Almaty Department for Natural Resources and Nature Use Management requesting to invalidate State Environmental Audit Report 07-08-133 dated 13 April 2013 with respect to the preliminary EIA documents included in the Feasibility Study for the Kok-Zhailau Ski Resort Project and stating that one of the key objectives of the Green Salvation Ecological Society, set forth in its charter, is comprehensive assistance to improving the social and environmental situation in the Republic of Kazakhstan. The Society aims to protect the people's right to live in an environment which is favourable for their health and well-being, to have access to information, to take part in the decision-making process and to have access to justice in environmental matters. Therefore, the Green Salvation Ecological Society is "the public concerned" in the context of Article 2.3 of the Aarhus Convention.

In 2011 Mr Yessimov, Akim (Mayor) of Almaty, informed that an international ski resort was planned to be built in the Kok-Zhailau area in the territory of the Ile-Alatau State National Nature Reserve, with a total length of pistes reaching 65 km, including chair lifts, hotels, restaurants, trade and entertainment centres and the respective infrastructure (a road, car parks, power and water supply systems).

At present the Almaty Tourism Department and Kok-Zhailau LLP are designing a project to construct the Kok-Zhailau international ski resort in the territory of the Ile-Alatau State National Nature Reserve, which is a site of national subordination.

On 13 April 2013 the Almaty Department for Natural Resources and Nature Use Management approved State Environmental Audit Report 07-08-133 dated 13 April 2013 with respect to the preliminary EIA documents included in the Feasibility Study for the Kok-Zhailau Ski Resort Project.

The plaintiff believes that the State Environmental Audit Report with respect to the preliminary EIA documents for the Kok-Zhailau Ski Resort Feasibility Study contradicts the laws of the Republic of Kazakhstan and international conventions, both in terms of its content and in selecting the auditor, and

will cause an irreversible deterioration of the environmental situation not only in the nature park but in Almaty as a whole and for these reasons it cannot be accepted as grounds “to make a conclusion about the acceptability and possibility to make a decision to implement” the Kok-Zhailau Ski Resort project and make a decision to finance it.

In accordance with Letter 03-22/3T-k-43 from the Ministry of Environmental Protection of the Republic of Kazakhstan, dated 16 April 2013, the planned activities are included in Hazard Category 4 and in accordance with Article 40 of the Environmental Code the project is included in Category III and for this reason the Department is authorised to make the respective assessment.

The plaintiff believes that the defendant has wrongly determined the category of the audited project and, consequently, the audit has been wrongly conducted by the Almaty Department for Natural Resources and Nature Use Management, because the resort is planned to be built in close proximity to the border with the Kyrgyz Republic. The site which is planned to be used is a territory shared with Kyrgyzstan and this is confirmed by Letter 03-20/13829 from the Ministry of Environmental Protection of the Republic of Kazakhstan, dated 19 December 2002, which states that construction was planned “in a highly sensitive, from the point of view of environmental protection, area” and, for this reason, “in the preparation of the draft EIA report the provisions of this Convention [meaning the Convention on Environmental Impact Assessment in a Transboundary Context] must be applied.”

In accordance with the Convention on Environmental Impact Assessment in a Transboundary Context, Kazakhstan must “notify any Party which it considers may be an affected Party [Kyrgyzstan] as early as possible and no later than when informing its own public about that proposed activity.”

The above means that the national park is an area with special requirements for business activities and that activities conducted in its territory can affect the environment of the neighbouring state.

Therefore, EIA must be conducted by an authorised environmental protection body, which is the Ministry for Environmental Protection of the Republic of Kazakhstan.

However, the Ministry of Environmental Protection has violated the effective laws and vested its authority with the Department, which is not authorised to conduct EIA.

The Almaty Akimat (Mayor’s Office) acts as both the contracting authority and the auditor for the project. The contracting authority is the Almaty Tourism Department and the auditor is the Almaty Department for Natural Resources and Nature Use Management, both of which are the divisions of the Almaty Akimat. The plaintiff believes that this violates the principle of independence of assessment.

In addition, the list of documents provided for assessment and listed in clause 3 of the State Environmental Audit Report with respect to the preliminary EIA documents for the Kok-Zhailau Ski Resort Feasibility Study lacks the documents, which are required to be submitted in accordance with the Rules for Conducting Environmental Audit approved by Order 207-p of the Minister of Environmental Protection on 28 June 2007. This is confirmed by Letter 3912 from the Almaty Department for Sanitary and Epidemiological Supervision, dated 25 July 2013, which states that it did not receive any documents for examination and did not make any conclusions, as well as by comments from the Forestry and Hunting Committee with respect to the draft Preliminary EIA report for the Kok-Zhailau Ski Resort Feasibility Study (attached to Letter 17-02-36/607-KLOKh dated 28 February 2013), which states that, having considered the Preliminary EIA documents for the Kok-Zhailau Ski Resort Feasibility Study, the Forestry and Hunting Committee came to a conclusion that, “The project needs significant improvement [...] need to be agreed with the administrative authorities of the Ile-Alatau State Nature Reserve.”

This confirms that many documents that are directly required by the effective laws are incomplete or missing. The audit report may not be prepared in the absence of sufficient objective data. This deficiency of the audit report is a direct consequence of the violation of the principle of independence of assessment.

The plaintiff also believes that the defendant has violated the principle of transparency and has not provided access to the public to the decision making process because the list of documents submitted for the environmental audit lacks the minutes of a public hearing, which needed to be conducted during the period of audit. The audit report states that a public hearing should be conducted later, which means that the defendant knows about this requirement but has deliberately ignored it.

The plaintiff's numerous enquiries addressed to the defendant and requesting to provide documents about the participation of the public in the environmental audit process have remained unanswered.

The above deficiencies in the State Environmental Audit Report with respect to the preliminary EIA documents for the Kok-Zhailau Ski Resort Feasibility Study confirm that it does not comply with the effective laws and for this reason the plaintiff requests that the court invalidate State Environmental Audit Report 07-08-133 dated 13 April 2013 with respect to the preliminary EIA documents for the Kok-Zhailau Ski Resort Feasibility Study prepared by the Almaty Department for Natural Resources and Nature Use Management.

In the court, the representatives of the Green Salvation Ecological Society insisted on the submitted claim and requested that it be upheld.

**The representatives of the defendant disagreed with the claim and commented as follows.**

The development of the ski resort is envisioned by Resolution 303 of the Government of the Republic of Kazakhstan, dated 14 April 2010, *On the Republican Industrialisation Map for 2010-2014*, the Plan for the Development of Almaty for 2011-2014 approved by the Resolution of the Almaty Maslikhat dated 15 February 2013, and the Strategic Plan of the Almaty Tourism Department approved by a resolution of the Almaty Akimat and compliant with the State Planning System approved by Decree 827 of the President of the Republic of Kazakhstan dated 18 June 2009.

In addition, at an extended session of the Government, which took place on 17 April 2011 and in which the President of the Republic of Kazakhstan took part, the Minister of Tourism and Sport of the Republic of Kazakhstan was asked to make proposals as to how stimulate the tourism sector and develop a network of ski resorts. Also in his state-of-the-nation address dated 27 January 2012 the President stated that one of the important issues in the current development is the diversification of foreign direct investment flows in Kazakhstan's economy, which should be directed to promising sectors such as "the development of tourism and world-class ski resorts near Almaty."

The defendant states that in 2011 Mr Yessimov, Akim (Mayor) of Almaty, informed the public of Kazakhstan that an international ski resort was planned to be built in the Kok-Zhailau area.

In addition, the website of the Almaty Tourism Department contains a summary of the feasibility study for the Kok-Zhailau Ski Resort Local Budget Investment Project, the Preliminary EIA Report (Volumes 1 and 2) prepared after the public hearing and the minutes of the public hearing with respect to the Preliminary EIA Report dated 11 January 2013. For this reason the defendant believes that the principle of transparency has not been violated.

As for the category of the project, the defendant explained that, in accordance with Article 47.8 of the Environmental Code, Category I includes master plans for the development of cities, towns and areas, including the areas of special economic zones and areas with special business regime.

Article 1.3 of the Law *On Specially Protected Natural Areas* defines specially protected areas as follows: “specially protected area” means plots of land, water bodies and air space above them with natural complexes and sites included in the state nature and reserve fund, for which a special protection regime applies,” however without a special business regime.

The Environmental Regulation and Control Committee at the Ministry of Environmental Protection, in its Letter 13-06-26/178-i dated 26 February 2013, classifies the preliminary EIA documents with respect to the feasibility study for the Kok-Zhailau Ski Resort as Category III, which means that environmental impact in the transboundary context is excluded.

Therefore, in accordance with Article 48 of the Environmental Code, the audit was conducted by a local executive body, namely the Almaty Department for Natural Resources and Nature Use Management.

As for the plaintiff’s arguments that the documents that had been submitted for the **environmental** audit were incomplete, the defendant explained that, in accordance with the Guidelines for the Conduct of the Environmental Impact Assessment of Planned Business or Other Activities in the Course of the Preparation of Preliminary Planning, Planning, Preliminary Design and Design Documents approved by Order 204-p of the Ministry of Environmental Protection on 28 June 2007 (“Guidelines”), a preliminary EIA report needs to be prepared as part of preliminary planning (preliminary investment) documents, which substantiate business and other activities, and as part of preliminary design and evaluation documents prepared at an early stage of the initiated business and other activities. The types and the intensity of the impact of the planned business activities are determined based on similar projects or using specific indicators compliant with international standards/techniques, with areas that require further research or survey to be specified. No calculations of the level of contamination of components of the environment (air, soil, water, subsoil, etc.) need to be made in this case. Proceeding from the level of the environmental threat and the scale of the respective planned business activities, a preliminary EIA report needs to include additional calculations to model the spread/dissemination of contaminants (emissions, discharges) in the environment (air, surface and ground water, soil). Qualitative and quantitative characteristics (emissions, discharges, production and consumption waste, the area of the land provided for temporary or permanent use, etc.) obtained in the course of preliminary assessment are indicative and cannot be approved as environmental standards.

The defendant reported that the Preliminary EIA report had been prepared by CaspiEcology Environmental Services LLP in two volumes in accordance with the environmental laws of Kazakhstan and is deemed as part of the feasibility study for the project. The feasibility study was prepared to the order of the Almaty Tourism Department in October-December 2012 by the consortium of Gornolyzhny Kurort Kok-Zhailau LLP and EcosignMountainResortPlanners LTD, with Horwath, ARUP, Engineerisk and KPMG as subcontractors. The feasibility study for Kok-Zhailau has been developed in accordance with the effective laws of the Republic of Kazakhstan and this is confirmed by State Expert Examination Report 02-0161/13 dated 11 March 2013.

The defendant also explained that Article 12 of the Guidelines for the Conduct of State Environmental Impact Assessments, approved by Order 207-p of the Minister of Environmental Protection of the Republic of Kazakhstan on 28 June 2007 (as amended and supplemented as at 3 September 2013), determines the scope and composition of all stages of project documents provided for the state environmental audit. The need to have the documents approved by the organisations listed in Article 12.4

is determined by an expert authority depending on what environmental areas are impacted by the planned activities. The State Environmental Audit Report with respect to the Preliminary EIA for the Kok-Zhailau Ski Resort Feasibility Study sets out the following conditions which need to be met: in accordance with the Law of the Republic of Kazakhstan *On Specially Protected Nature Areas* the category of the land where the ski resort will be located needs to be changed in accordance with the prescribed procedure, with a respective resolution of the Government of the Republic of Kazakhstan to be passed; the title to the occupied land needs to be legalised, with a respective land use statement to be issued; the boundaries of water protection areas and surface water bodies (rivers, the Big Almaty Lake, strings) located in the land to be used need to be determined, with a respective resolution of the Almaty Akimat to be passed; a public hearing with respect to the draft EIA report on the construction of the ski resort needs to be conducted; research and surveys described in Section 9 of the Preliminary EIA Report need to be conducted in the course of the development of the draft EIA report; the draft EIA report needs to be approved by authorised bodies in the area of emergencies and sanitary and epidemiological supervision, surface and ground water protection, and forest protection; in accordance with the Rules for the Maintenance and Protection of Plants in Almaty approved by Resolution 119 of the Almaty Maslikhat on 2 July 2008, plants need to be inspected in the area of construction and funds need to be budgeted to restore vegetation and conduct technical supervision over it within the first two years.

In addition, in the process of developing the feasibility study for the Kok-Zhailau project, a map of environmental restrictions has been prepared, which factors in: (a) restrictions with respect to the endangered species of flora and fauna; (b) recommended protection zones along water bodies; (c) prohibited areas; and (d) other aspects.

Measures to reduce environmental impact from the resort are proposed for the areas where impact will be inevitable, although insignificant; in addition, a field survey is recommended to be done at the stage of the preparation of design estimates.

The representatives of the defendant note that the issue of environmental protection and environmental sustainability is one of the key issues which will be dealt with in the course of the further design of the resort. In addition, the experience of other international resorts will be taken into account in order to minimise environmental impact; compliance with recommendations will be a rigorous requirement in the process of making further project decisions and conducting construction in the future in the framework of the project.

As for endangered species, the representatives of the defendant reported that only a part of the road and two lines of the lift will affect the areas where endangered species of plants are growing. Endangered plants and animals will be mapped at the EIA stage. The pistes will be redesigned in order to avoid impact. If it is impossible to reduce impact, compensatory measures will be taken, such as the replanting of cut trees. Trees will be planted based on scientific recommendations and the final decision about the sufficiency of compensatory measures will be made by an authorised state body.

The defendant reported that the issue of allocating budget funds for the development of design estimates for the Kok-Zhailau project has been resolved at the national level and work is underway to reclassify specially protected land as reserve land. The boundaries of the ski resort will be determined in the course of this work.

Taking into account the above, the defendant requests that the court dismiss in full the claim by the Green Salvation Ecological Society requesting to invalidate the State Environmental Audit Report with respect to the preliminary EIA documents for the Kok-Zhailau Ski Resort Project.

Ms Burumbayeva, a **representative** of the Almaty Tourism Department, a non-party intervener on

the side of the defendant, which does not file its own claims with respect to the subject matter of the dispute, disagreed with the claim and explained that all the actions by the defendant in the course of the audit were taken based on legal grounds. She also requested that the court dismiss the claim.

**Having listened to the comments by the parties and the opinion of the prosecutor, who believed that the claim should be dismissed, and having studied and considered the files of the case and the provided evidence, as a whole and separately, the court comes to the following conclusion.**

The court has verified that Resolution 303 of the Government of the Republic of Kazakhstan dated 14 April 2010 approved the Industrialisation Map of Kazakhstan for 2010-2014, which includes the development of a world-class ski resort in Almaty.

In pursuance of the State-of-the-Nation Address by President of Kazakhstan Nursultan Nazarbayev dated 27 January 2012, on 29 December 2012 the Government of the Republic of Kazakhstan adopted Resolution 1761, which approved the Plan for the Development of World-Class Ski Resorts in Almaty Oblast and near Almaty.

The authorised body in the area of environmental protection is the central executive body which manages and ensures intersectoral cooperation in the area of environmental protection and nature use, as well as its territorial divisions.

State environmental control in the Republic of Kazakhstan was exercised by the Ministry of Environmental Protection of the Republic of Kazakhstan, as an authorised body, and its territorial divisions, within the framework of their authority, which has been then reorganised into the Ministry of the Environment and Water Resources of the Republic of Kazakhstan (Decree 677 of the President *On Further Improvements in the State Control System*, dated 29 October 2013).

In accordance with Article 1.99, “environmental audit” means the process of determining whether planned business or other activities comply with the environment quality standards and environmental requirements and whether the project submitted for environmental audit is permissible in order to prevent possible adverse impacts from these activities on the environment and related social consequences.”

Environmental audits are conducted in order to determine and constrain possible adverse effects of planned management, business, investment, regulatory and other activities on the environment and public health and ensure a balance of interests relating to economic development and environmental protection, as well as to prevent damages which may be caused to third parties in the process of nature use (Article 46 of the Environmental Code).

In accordance with Article 45 of the Environmental Code, two types of environmental audits exist in Kazakhstan: a state environmental audit and a public environmental audit.

Preliminary design and design documents relating to planned activities that have an impact on the environment, including accompanying documents relating to EIAs conducted at the stages determined in Article 37 of the Code, are subject to mandatory state environmental audits.

In accordance with Article 37.2 of the Environmental Code, an EIA includes the following stages:

1. a preliminary EIA (Stage 1);
2. impact assessment conducted in order to fully and comprehensively analyse possible effects of the project or of the continuation of business or other activities, substantiate alternative options and develop a plan (environmental protection management programme; Stage 2);

3. the Environmental Protection section included in the detail project, which should contain technical solutions as to how prevent adverse impacts on the environment (Stage 3).

The court has found out that in the course of performing the above Resolutions of the Government and the Development Plan, the defendant (the Almaty Department for Natural Resources and Nature Use Management) approved on 13 April 2013 State Environmental Audit Report 07-08-133 with respect to the Preliminary EIA documents included in the feasibility study for the project to construct the Kok-Zhailau ski resort located in the Ile-Alatau State National Nature Park, which is being disputed by the plaintiff.

In the course of considering whether the environmental audit report with respect to the preliminary EIA documents included in the feasibility study for the Kok-Zhailau project comply with the effective laws, the court has found out as follows.

The preliminary EIA documents were developed by CaspiEcology Environmental Services LLP. The contracting authorities for the project are the Almaty Tourism Department and Kokzhailau LLP, which are separate legal entities and not divisions of the Almaty Akimat.

In accordance with Article 40 of the Environmental Code, business and other activities, for which environmental impact assessment is performed, are divided, in terms of their importance and the completeness of assessment, into four categories: I, II, III and IV.

The Almaty Department for Natural Resources and Nature Use Management operates in the area of environmental protection (arranging and conducting, in the framework of its authority, state environmental audits of business projects) in accordance with Article 20.3 of the Environmental Code of the Republic of Kazakhstan (“Environmental Code”).

In accordance with Article 48.2 of the Environmental Code, state environmental audits for the projects included in Categories II, III and IV are conducted by local executive bodies of oblasts (cities of national subordination, capitals). The procedure for conducting state environmental audits is determined by the authorised body in the area of environmental protection (Article 17.28, Article 49.2 of the Environmental Code). In addition, the authorised body in the area of environmental protection is authorised to coordinate and provide methodical guidelines for environmental audit activities in the Republic of Kazakhstan (Article 17.12 of the Environmental Code).

In particular, Letter 13-06-26/178-I to the Almaty Akimat, dated 26 February 2013, states that the Environmental Regulation and Control Committee at the Ministry of Environmental Protection of the Republic of Kazakhstan, having considered the preliminary EIA documents included in the feasibility study for the construction of the Kok-Zhailau ski resort in the area of the Zailiyskiy Alatau (“draft preliminary EIA report”), concluded as follows.

In accordance with Section 10.1, *Statement of Environmental Impacts*, of the draft preliminary EIA report, the planned activities are of Hazard Class 4 and, in accordance with Article 40 of the Environmental Code, are included in Category III.

In accordance with Article 48.2 of the Environmental Code, Category III projects must be examined by local executive bodies of oblasts (cities of national subordination, capitals).

Therefore, the Environmental Regulation and Control Committee at the Ministry of Environmental Protection had the authority to determine the category of the preliminary EIA documents

included in the feasibility study for the Kok-Zhailau ski resort project, since it is the authorised body in the area of environmental protection and specially protected nature areas. This means that the fact that the project had been included in Category III excluded its impact on the environment in the transboundary context.

In accordance with Article 3.9 of the Law of the Republic of Kazakhstan *On Public Service*, one of the principles of the public service is that resolutions passed by superior governmental bodies and officials within the framework of their authority are mandatory.

In this situation the Almaty Department for Natural Resources and Nature Use Management simply performed the instructions from the superior public authority.

In the above circumstances, the plaintiff's arguments that the principle of independence was violated in the course of the audit because the contracting authority for the project was the Almaty Tourism Department and the expert authority was the defendant, the Almaty Department for Natural Resources and Nature Use Management, which are both divisions of the Almaty Akimat, were contested by the defendant and were not proven by documental evidence before the court.

The plaintiff also claims that the documents submitted for the state environmental audit were incomplete, referring to Letter 3912 from the Almaty Department for Sanitary and Epidemiological Supervision dated 25 July 2013, which states that no additional documents had been submitted to it with respect to the above project, and to comments from the Forestry and Hunting Committee on the draft preliminary EIA report attached to Letter 17-02-36/607-KLOKh dated 28 February 2013.

In addition the plaintiff believes that the defendant has violated the procedure for conducting the state environmental audit; in particular, it has failed to provide the minutes of the public hearing with respect to the preliminary EIA report on the Kok-Zhailau ski resort project.

In accordance with Article 57.2 of the Environmental Code, all interested citizens and public associations are provided with an opportunity to express their opinion during the conduct of an environmental audit.

In accordance with clause 12 of the Rules for Conducting State Environmental Audits approved by Order 207-p of the Minister of Environmental Protection of the Republic of Kazakhstan on 28 June 2007 (as amended and supplemented as at 3 September 2013), the scope and composition of all stages of project documents submitted for state environmental audits must be determined.

The need to get approval from the organisations listed in Article 12.4 is determined by the expert authority depending on what environmental sites are impacted by the planned activities.

When studying the disputed report, the court has found out that it states that the following measures need to be taken:

in accordance with the Law of the Republic of Kazakhstan *On Specially Protected Nature Areas* the category of the land where the ski resort will be located needs to be changed in accordance with the prescribed procedure, with a respective resolution of the Government of the Republic of Kazakhstan to be passed;

the title to the occupied land needs to be legalised, with a respective land use statement to be issued;

the boundaries of water protection areas and surface water bodies (rivers, the Big Almaty Lake, strings) located in the land to be used need to be determined, with a respective resolution of the



Almaty Akimat to be passed;

a public hearing with respect to the draft EIA report on the construction of the ski resort needs to be conducted;

research and surveys described in Section 9 of the draft preliminary EIA report need to be conducted in the course of the development of the draft EIA report;

the draft EIA report needs to be approved by authorised bodies in the area of emergencies and sanitary and epidemiological supervision, surface and ground water protection, and forest protection;

in accordance with the Rules for the Maintenance and Protection of Plants in Almaty approved by Resolution 119 of the Almaty Maslikhat on 2 July 2008, plants need to be inspected in the area of construction and funds need to be budgeted to restore vegetation and conduct technical supervision over it within the first two years.

It follows from the above that the draft EIA report envisions approvals from authorised bodies and a public hearing.

In addition, the files of the case contain the minutes of the public hearing dated 11 January 2013, which record the discussion of the preliminary EIA report included in the feasibility study for the Kok-Zhailau ski resort local investment project. A total of 102 people took part in the hearing, including representatives from governmental agencies and public associations such as the Tabigat Environmental Union and the Green Salvation Ecological Society, including Mr Ainabekov, General Director of the Ile-Alatau State National Nature Park. This contradicts the plaintiff's argument that no public hearing had been conducted and that the management of the national park had not been informed about the plans to construct a ski resort in the Kok-Zhailau area.

In addition, the court has found out that all the documents had been made available at the website of the Almaty Tourism Department.

The court has also found out that, in accordance with the Guidelines, a preliminary EIA report needs to be prepared as part of preliminary planning (preliminary investment) documents, which substantiate business and other activities, and as part of preliminary design and **evaluation** documents prepared at an early stage of the initiated business and other activities. Qualitative and quantitative characteristics (emissions, discharges, production and consumption waste, **the area of the land** provided for temporary or permanent use, etc.) obtained in the course of preliminary assessment are **indicative** and cannot be approved as environmental standards.

The state environmental audit report concludes that the decision to implement the audited project is **permissible and possible** (Article 51.2 of the Environmental Code).

During the hearing the plaintiff referred to the comments from the Forestry and Hunting Committee at the Ministry of Environmental Protection (letter 17-02-36/607-KLOKh dated 28 February 2013). As the representatives of the defendant explained, these comments had been taken into account in the course of the audit and were reflected in State Environmental Audit Report 07-08-133 dated 13 April 2013. In addition, the court deems it necessary to point out that the disputed report does state all the possible adverse impacts on the environment and includes a list of planned environmental protection measures.

Therefore, the court believes that the state environmental audit of the preliminary EIA documents included in the feasibility study for the Kok-Zhailau Ski Resort Project at this stage, which is not final, has been conducted in accordance with the law.

For this reason the court has no grounds to invalidate the respective report.

In these circumstances the claim filed by the Green Salvation Ecological Society against the Almaty Department of Natural Resources and Nature Use Management requesting to invalidate State Environmental Audit Report 07-08-133, dated 13 April 2013, with respect to the preliminary EIA documents included in the feasibility study for the Kok-Zhailau Ski Resort Project should be dismissed.

In pursuance of Articles 217-221 of the Code of Civil Procedure, the court

JUDGES AS FOLLOWS:

The claim filed by the Green Salvation Ecological Society against the Almaty Department of Natural Resources and Nature Use Management and the Tourism Department, as a non-party intervener on the side of the defendant, which does not file its own claims with respect to the subject matter of the dispute, requesting to invalidate State Environmental Audit Report 07-08-133, dated 13 April 2013, with respect to the preliminary EIA documents included in the feasibility study for the Kok-Zhailau Ski Resort Project should be dismissed.

This judgement may be appealed against by the parties or contested by the prosecutor in a court of appeal within fifteen days of receiving a copy of this judgement.

Judge Kazymbetova, G. N.

Note: The judgement has not taken effect.

This is a true copy:

Judge Kazymbetova, G. N.

Note: The judgement took effect on \_\_\_\_\_ 2013.

Judge Kazymbetova, G. N.