

REPORT ON MEASURES TAKEN TO IMPLEMENT THE DECISION IV/9c

**COMPLIANCE OF KAZAKHSTAN WITH ITS OBLIGATIONS UNDER THE AARHUS
CONVENTION**

Party	Republic of Kazakhstan
National Focal Point	
Full name of institution:	Ministry of environmental protection of the Republic of Kazakhstan
Name and position of officer:	Mukanova Diana Kenzhebekovna Director, Department of Environmental Legislation

Post address:	Republic of Kazakhstan, 010000, Astana city, left bank, House of ministries, 14 entry
Telephone:	+ 7 (7172) 74-00-99
Fax:	+ 7 (7172) 74-08-84
E-mail address:	mukanova@eco.gov.kz orhus@iacoos.kz

Point of decision IV/9c

4. Study in detail with appropriate involvement of the public the relevant environmental and procedural law and the legal precedents in order to determine whether it provide for court and other agencies to consider the possibility of adequate and effective measures in the course of judicial review.

This report is based on the analysis of environmental and civil procedural legislation of the Republic of Kazakhstan for compliance with requirements of the Aarhus Convention in relation to access to justice, analysis of court decisions over the period 2008-2011 on the disputes about the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, developed on the basis of the analysis of recommendations on bringing the national legislation of the Republic of Kazakhstan in accordance with the provisions of the Aarhus Convention. Considerable amount of information obtained from the website of the Ecological Society "Green Salvation» <http://www.greensalvation.org> section "Legal Proceedings" and from the websites of the Aarhus Centres of the Republic of Kazakhstan.

The results of the Analysis¹ of environmental and civil procedural legislation of the Republic of Kazakhstan for compliance with the requirements of the Aarhus Convention in respect of access to environmental information, justice and public participation in decision-making, Analysis² of court decisions over the period 2008-2011 on disputes about the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, have been sent to the Regional Aarhus Centres and public associations for the discussion in the regions.

On September 8, 2011 by the order № 238 of the Minister of Environmental Protection of the Republic of Kazakhstan has been established a new interagency working group on the implementation of the Aarhus Convention. The working group includes the following representatives:

- Ministry of Environmental Protection, including its structures (Department of

¹ http://www.aarhus.kz/index.php?option=com_content&task=view&id=444

² http://www.aarhus.kz/index.php?option=com_content&task=view&id=444

Environmental Legislation and Legal Service, Department of Kyoto Protocol, the Committee of ecological regulation and control, Department of international environmental conventions and agreements, Department of production and consumption Waste Management, Department of Environmental Policy and Sustainable Development, Department of economic instruments and regulatory in environmental matters)

- National Aarhus center (RSE «Informational and analytical center for environmental protection»)
- Supreme court of the Republic of Kazakhstan
- Akimat of Astana city
- Committee of Information and Archives, Ministry of Communications and Information of the Republic of Kazakhstan
- Committee of Geology and Subsoil Use, Ministry of Industry and Trade of the Republic of Kazakhstan
- Forestry and Hunting Committee, Ministry of Agriculture of the Republic of Kazakhstan
- Department of gas industry development, Ministry of Oil and Gas of the Republic of Kazakhstan
- Committee of the State Epidemiological Supervision, Ministry of Health of the Republic of Kazakhstan
- Committee of science, Ministry of education and science of the Republic of Kazakhstan

On December 2nd, 2011 at a meeting of the Working Group on the implementation of the Aarhus Convention has been presented the information on the status of implementation of the Aarhus Convention, the outcome of the 4th Conference of the Parties to the Aarhus Convention, the compliance by Kazakhstan with its obligations under the Convention. During the discussion, the working group has decided:

Working group members - representatives of government agencies:

- Explore the legislation of the Republic of Kazakhstan, within its competence and its application for compliance with the provisions of the Aarhus Convention, and to provide information to the MEP before February 2, 2012;

- *working group* to consider and submit until December 14 this year to the Ministry of Environmental Protection the existing comments and suggestions to the developed:

Analysis of the environmental and civil procedural legislation of the Republic of Kazakhstan for compliance with requirements of the Aarhus Convention in respect of access to environmental information, justice and public participation in decision-making;

Analysis of court decisions over the period 2008-2011 on disputes about the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter - Analysis).

National Aarhus Center, regional Aarhus centers, Zhaiyk-Caspian Aarhus Centre:

- post the Analysis on the websites of Aarhus centers, Ministry of Environmental Protection and other resources well as a contact person to whom the comment are sent;

- until December 14th of this year organize meetings to discuss the Analysis with the involvement of NGOs and the public concerned with the representation of comments to the MEP.

Ministry of Environmental Protection in cooperation with the OSCE Centre to organize on December 13th of this year a Round table with participation of the public to discuss the results of the Aarhus Convention in Kazakhstan.

The expert of the OSCE Centre to finalize the Analysis taking into account the comments and present it on the "round table" (December 13).

Ministry of Environmental Protection to prepare a report on the implementation of the Decision of the 4th Conference of the Parties to the Aarhus Convention and timely sent to the Compliance Committee (until January 1, 2012).

On December 13th, 2011 the Ministry of Environmental protection of the Republic of Kazakhstan jointly with the National Aarhus Center of Kazakhstan with the support of the OSCE Centre in Astana, held a round table on discussion the results of implementing by Kazakhstan the Aarhus Convention. The roundtable was attended by members of the Working Group on the Implementation of the Aarhus Convention, representatives of the OSCE Centre in Kazakhstan, the Aarhus Centre of RK, regional Aarhus Centres, non-governmental environmental organizations.

The meeting discussed a number of issues on the implementation of the Aarhus Convention, analysis of the environmental and civil procedural legislation of the Republic of Kazakhstan for compliance with requirements of the Aarhus Convention in respect of access to environmental information, justice and public participation in decision-making, analysis of court decisions over the period 2008-2011 on disputes about the Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (hereinafter - Analysis), on the execution of the 4th Conference of the Parties of the Aarhus Convention in respect of Kazakhstan.

Having considered all the issues, participants, within their competence, have decided:

to endorse the conclusions drawn from the implementation of decisions IV/9s of the Parties to the Aarhus Convention on the compliance of environmental and civil procedural legislation of the Republic of Kazakhstan with the requirements of the Aarhus Convention on the access to environmental information, public participation in decision-making and Access to Justice in Environmental Matters;

continue the work on further improving the legislation of the Republic of Kazakhstan (including environmental, forest, water, land, on public associations, on statistics, on the procedure for public hearings) to harmonize with the provisions of the Aarhus Convention.

Roundtable participants developed recommendations:

Ministry of Environmental protection of the Republic of Kazakhstan
- to prepare on the basis of the given analysis the proposals into the legislation of the Republic of Kazakhstan taking into account the data of the recommendations and enter into the interagency working group;

- further work on the preparation and promotion of the proposals into the legislation should be in close collaboration with NGOs;

- to amend the rules for public hearings (approved by the Order of the Minister of

Environmental protection of the Republic of Kazakhstan on May 7, 2007 № 135- п), to consider the issues of responsibility for controlling public participation procedures to the governmental authority responsible for the decision-making, expanding the forms of public participation and methods of informing the public, a clear mechanism for the regulation of public opinion;

Supreme Court of the Republic of Kazakhstan:

- Continue work on training judges, as well as conducting monitoring and recording of court cases aimed at the implementation of the Aarhus Convention;
- Regional training centers to collaborate on training judges on environmental legislation together with Aarhus Centres;

National Aarhus Center, Zhaiyk -Caspian Aarhus center, regional Aarhus Centres:

- To take an active part in discussing the proposals in the legislation of the Republic of Kazakhstan;
- intensify the work on consulting the public and the citizens on the potential of the Aarhus Convention on the basis of legislation of the Republic of Kazakhstan;
- provide training on the application of the Aarhus Convention among stakeholders, including the participation of NGOs, judges, prosecutors and representatives of other governmental bodies holding environmental information and decision-making affecting the environment;
- Conduct training on the application of the Aarhus Convention among stakeholders, including prosecutors

Non-governmental organizations:

- Prepare and submit to the Ministry of Environmental protection the proposals on providing access to information and participation in decision-making of concerned non-governmental organizations, including at public hearings;

International organizations concerned:

- Consider the possibility of organizing and conducting training seminars for the public on the preparation of applications (claims), appeal, cassation and supervision complaints to the courts, as well as the application to the prosecuting authorities on the subject of a protest on the environmental matters.

Supreme Court of the Republic of Kazakhstan have entered the following proposals:

1) add paragraph 1 of Article 14 of the Environmental Code of the Republic of Kazakhstan by the subparagraph 14), providing public associations the right to petition to the court with a claim in the interests of the general public, whose rights are allegedly violated by the actions of government agencies, businesses and individuals.

The proposal is caused by the fact that the meaning of Article 8 of CPC public has a right to apply to court to protect the rights and lawful interests of others or unspecified persons in cases provided by law. Meanwhile, this norm of the Environmental Code associations have the right to protect the rights and interests of citizens in field of environmental protection, but there is no direct reference to the subject composition - an indefinite number of persons.

2) initiate appropriate amendments to the law on public organizations where they will be

given the opportunity to protect the rights of members of their public organization.

Such changes will fully comply with the provisions of the Aarhus Convention and Article 8 of the CPC, as well as the interests of the population.

3) on the disputes of the public on the Chapter 27 of CPC for an action (or inaction) of state authority, local authority, organization, official, public official for the protection of the environment to remove restrictions on terms of treatment, since environmental violations shall be removed in any case.

4) public claims on environmental disputes release from the state tax in the first instance, if claims do not specify the requirements of material nature for damages (compensation) in favor of the person or entity (item 8) of Article 541 of the Tax Code). This approach will enhance the activity of environmental NGOs, will reduce the costs of control and supervisory functions of public authorities and, more importantly, will improve the ecological situation in the country.

5) alignment with the requirements of the Aarhus Convention and national legislation the departmental acts of statistical agencies in the provision of environmental information on the requirements of the public.

On the course of further work to bring legislation on the basis of the analysis, and other proposals, the Secretariat will be informed within the time prescribed by paragraph 6 of the Decision IV/9s.

ADDITIONAL INFORMATION ON THE PRACTICAL IMPLEMENTATION OF THE DECISION IV/9s

In the Ministry of Environmental Protection (hereinafter - MEP) and the Committee of Environmental Regulation and Control (hereinafter - CERC) operate web sites that provide access to information on environmental matters in the Republic of Kazakhstan, on current environmental events in the country.

The website contains reference information about the structure and activities of the Ministry, on current and future official events, the legislative activity, and the schedule of reception the citizens.

Web sites of MEP (www.eco.gov.kz) and CERC (www.ecokomitet.kz) allow operatively post information, publications for a wide range of users of the Republic of Kazakhstan, CIS countries and the international community.

MEP according to the results of the discussions of the given Analysis (Annex № 1 and Annex № 2) at a meeting of the working group to implement the Aarhus Convention, held on 2nd of December 2011, and with the participants of the round table held on 13th of December 2011, made the following recommendations:

- Supreme court

1. Recommend to a regional training centers to work more actively with the Aarhus Centres (invite experts from the Aarhus Centre for lectures and joint events)
2. Determine in courts (or centers) the person responsible for the implementation of the Aarhus Convention

3. bring in 2012 the Resolution the Supreme Court of the Republic of Kazakhstan from December 22nd, 2000 № 16 "On the practice of application by courts the legislation on the protection of the environment" in accordance with the Environmental Code of the Republic of Kazakhstan and the Aarhus Convention.
 - MEP RK
4. Make changes to the tax code - to provide exemption from payment registration fee and court costs on the processes related to environmental issues
 - Include in the social order the projects concerning the implementation of the Aarhus Convention and monitoring the implementation of AC
 - Aarhus centers
5. Increase the awareness of stakeholders on the use of the Aarhus Convention;
6. monitor the implementation of the Aarhus Convention;
7. Together with stakeholders to develop proposals for improving public participation in decision-making;
8. Undertake work with international organizations for inclusion into the programs the implementation issues of environmental rights of the population
9. Conduct training seminars for all stakeholders
 - Akimats
10. Include into training programs of civil servants issues of implementation of the Aarhus Convention;
11. Actively interact with Aarhus centers.

In order to implement the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, in 2011 at the expense of the state budget was created 4 regional Aarhus Centres on the basis of non-governmental organizations:

The Aarhus Centre in Shymkent based on Foundation "Fund of assistance to businesses and farms of the South Kazakhstan Region";

Aarhus Center in Karaganda on the basis of Public association "Karaganda Regional Ecological Center" EcoCenter";

The Aarhus Centre in Pavlodar based on Public association "ECOM";
The Aarhus Centre in the city of Aktau on the basis of association "Mangistau Aarhus Center."

Currently in the Republic of Kazakhstan there are 6 Aarhus Centres established, which work on the main three areas of the Aarhus Convention:

- Access to information;
- public participation in decision-making;
- Access to Justice in Environmental Matters.

Web portals of Aarhus Centres are functioning, which are sources of large amounts of environmental information.³

Considerable attention is the implementation of the Aarhus Convention in the courts giving the Supreme Court of the Republic of Kazakhstan. Supreme Court and Company now mutually

³ www.aarhus.kz

exchange information with the Ministry of Environment, as well as with environmental NGOs on all issues of the Aarhus Convention.

In the local courts and the Supreme Court of Kazakhstan specialization of judges to review claims of citizens and community organizations in environmental disputes is used. The courts of Kazakhstan in its activities based on the fact that the rules of this important international treaties have direct effect in the legal system of Kazakhstan precedence over national law and applied by the courts themselves.

In the Supreme Court and local courts regularly studied jurisprudence on the application of environmental laws by the courts. At the present time by the specialists of the Supreme Court work on the monitoring of court decisions on disputes arising from the provisions of the Aarhus Convention in the period 2010-2011 is being done. Results will be posted on the WEB-site of the Supreme Court.

Court acts on the claims of the public on environmental issues posted on the Supreme Court along with other judicial acts.

Since October 2007, the Supreme Court on Web-site⁴ in the section "International cooperation" is page "Implementation of the Aarhus Convention", which includes: regulations on matters relating to the environment, reports of the meeting of the European Economic Commission on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters; allowance for use of the Aarhus Convention and statistical information on the review of court cases related to environmental protection, as well as articles and interviews on the protection of the environment with reference in the subsection "Proceedings of conferences and seminars."

In the Supreme Court, local courts in the home and together with international partners on a regular basis a variety of events (conferences, round tables, trainings and seminars), in which the agenda included discussion on the application of international agreements in the courts of the Republic, including the Aarhus Convention. In 2011, the educational training seminars conducted training centers of the regional courts in conjunction with environmental organizations.

In the course of these activities is used hands-on training manual for use by the courts of the Aarhus Convention in Kazakhstan, which was developed by the judges of the Supreme Court and an expert of the OSCE in 2008 and published in Kazakh and Russian languages, the publication sent to all libraries of vessels, as well as extended handouts on a number of seminars and conferences.

The media regularly publishes materials on environmental issues in the newspaper "South" periodically published column "A judge in a note" on the application of environmental laws by the courts.

Judge of the Supreme Court in February 2011 participated in the preparation of materials to the questionnaire, the Secretariat of the Aarhus Convention on access to justice in environmental matters, with emphasis on lighting costs and the financial remedies available in Kazakhstan.

Questions on the provisions of the Aarhus Convention are included in the work program on probation judges, as well as plans for training programs graduate Institute of Justice, trainings of judges.

⁴ www.supcourt.kz

In order to ensure uniform interpretation and correct application of environmental laws by the courts in civil cases in the area of environment, considered for inclusion in the work plan of the Supreme Court in the second half of 2012 conduct a generalization of judicial practice on the use of the courts of legislation on environmental protection, including Disputes arising from the implementation of the Aarhus Convention. In a subsequent planned to draft a new regulatory decisions of the Supreme Court, "On some issues of practical application of legislation on environmental protection." To this end, the Supreme Court addressed a letter to the environmental NGOs for proposals on the content of the new regulatory order.

In addition, the Supreme Court together with the competent authority for conducting legal statistics taken measures to streamline the collection and recording of statistical data on court cases involving claims of individuals and environmental organizations.

According to the results of seminars, conferences, discussion of problems with environmental NGOs, the study of judicial decisions, the Supreme Court to make proposals for environmental legislation, as well as a decrease in financial expenses for court costs.

Thus, under Articles 495 and 496 of the Tax Code of June 12, 2001 charging the state fee to the appeals for judicial acts is excluded from the provisions of the new Tax Code on December 10, 2008, that meets the requirements of the Aarhus Convention.

The experience of the Supreme Court of Kazakhstan on the practical, methodological, and organizational activities in the framework of the Aarhus Convention on the WEB-site management, monitoring of court decisions and interactions with environmental NGOs interested in the CIS countries and is being studied.