

Compliance Committee to the Convention on  
Access to Information, Public Participation  
in Decision-making and Access to Justice  
in Environmental Matters (Aarhus Convention)

**First progress review of the implementation of decision V/9i  
on compliance by Kazakhstan with its  
obligations under the Convention**

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## **I. Introduction**

1. At its fifth session (Maastricht, 30 June–1 July 2014), the Meeting of the Parties to the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) adopted decision V/9i on compliance by Kazakhstan with its obligations under the Convention (see ECE/MP.PP/2014/2/Add.1).

## **II. Summary of follow-up action with decision V/9i**

2. By letter of 11 December 2014, the Committee sent a reminder to the Party concerned of the request by the Meeting of the Parties in paragraph 8 of decision V/9i to provide its first detailed progress report to the Committee by 31 December 2014 on the measures taken and the results achieved thus far in implementation of the recommendations set out in that decision.

3. The Party concerned provided its first progress report on the implementation of decision V/9i on 30 December 2014.

4. At the Committee's request, on 7 January 2015 the secretariat forwarded the Party concerned's first progress report to the communicants of communications ACCC/C/2004/1, ACCC/C/2004/2, ACCC/C/2004/6 and ACCC/C/2011/59, inviting them to provide their comments on that report by 28 January 2015. Due to a technical error, the secretariat's email of 7 January 2015 did not reach the communicant of communication ACCC/C/2004/6 and it was re-forwarded to that communicant on 28 January 2015 with an extended deadline for comments.

5. On 28 January 2015, the communicant of communications ACCC/C/2004/1 and ACCC/C/2004/2 provided its comments on the Party concerned's first progress report.

6. On 2 February 2015, the communicant of communication ACCC/C/2004/6 provided its comments on the Party concerned's first progress report.

7. No comments were received from the communicant of communication ACCC/C/2011/59.

### **Party concerned's first progress report**

9. With respect to article 6, paragraph 2 of the Convention, the Party concerned in its first progress report stated that, pursuant to the Rules for Public Hearings, approved by order of the Ministry of Environment dated 7 May 2007 No. 135, the public is to be informed 20 days prior to a public hearing through advertisements in the media and on the website of the local executive body. It also reported that in 2014, Kazakhstan's thirteen Aarhus Centres had individually informed local populations of upcoming hearings through distribution of information leaflets, house visits etc.

10. With respect to article 6, paragraph 6, of the Convention, the Party concerned in its first progress report stated that the Rules for Public Hearings require that 20 days before the hearing the public is to be provided with the address of the location where they can be acquainted with the EIA documentation in paper form; to be able to access it on a website or to send an email to request to receive the EIA documentation electronically. The required structure and content of the project EIA is set in article 41 of the Environmental Code. In addition, the draft law "On Amendments and Additions to Legislative Acts of the Republic of Kazakhstan on environmental issues" is expected to add two further requirements to the

project EIA, namely justification of the action plan for the protection of the environment and justification of waste management program.

11. With respect to article 6, paragraph 7, of the Convention, the Party concerned in its first progress report stated that public participation is not limited to comments on the draft EIA.

12. With regard to article 6, paragraph 9 of the Convention, the Party concerned in its first progress report reported that a draft law on amendments and additions to the legislation on the Aarhus Convention has been submitted to Parliament. NGOs and individuals had participated in the development of the draft and submitted more than 10 proposals. The draft was discussed three times at the Public Council of the Ministry. The draft provides for the following amendments to the Environmental Code: Article 57 provides for a requirement to publish on the Internet site of the authorized body the conclusion of the state environmental expertise within three business days after signing; and article 160 provides that an electronic version of environmental permits will be published on the State Register of Pollutant Release and Transfer. The implementation of the law will include additional regulations to regulate in detail the issues of access to information and participation in decision-making.

#### **Comments on the Party concerned's first progress report**

13. With respect to article 6, paragraph 2 of the Convention, the communicant of communications ACCC/C/2004/1 and ACCC/C/2004/2 submitted that the means of notification set out in the Party concerned's first progress report do not meet the Convention's requirements regarding the adequacy and effectiveness of public notification because not everyone has access to the Internet, nor do all persons subscribe to newspapers or track the announcement of public hearings. It alleged that in practice, the public was often informed after the decision had already made by public authorities and the rules for public hearings were violated, e.g. by failing to notify, conducting hearings with dummies etc.

14. With respect to article 6, paragraph 6 of the Convention, the communicant of communications ACCC/C/2004/1 and ACCC/C/2004/2 noted that the Rules on Public Hearings do not prevent purely formal public hearings without proper consideration of the possible consequences of the activity. It commented that public hearings are conducted with gross violations of both the Convention and also the rules of public hearings. Moreover, while the structure of the draft EIA is fixed in article 41 of the Environment Code, the requirements are not necessarily met in practice nor the public has access to the listed information.

15. With respect to article 6, paragraph 7 of the Convention, the communicant of communications ACCC/C/2004/1 and ACCC/C/2004/2 stated that public participation in the drafting of legislation, strategies, policies and programmes is often formal with no feedback mechanisms between decision-makers and the public. Not every person can submit comments, because many do not have access to internet. The public right to participate in the decision-making, as recognized in the Environmental Code cannot be realized since do far no mechanisms exist for its implementation. With respect to the opportunities for the public to express their opinions through public environmental expertiza, the communicant comments that the public environmental expertiza is advisory in nature and is not required to be taken into account by public authorities.

16. With respect to article 6, paragraph 9 of the Convention, the communicant of communications ACCC/C/2004/1 and ACCC/C/2004/2 submitted that while the draft on amendments and additions to the legislation on the Aarhus Convention was not yet

accepted, it was premature to comment upon, because it may be rejected or modified. During the 13 years since Kazakhstan ratified the Convention, the public had repeatedly made clear that the country lacks mechanisms of public opinion. Moreover, there was a huge gap in Kazakhstan between the law and its practical application.

17. Communicant of communication ACCC/C/2004/6 stated that the situation for public participation in Kazakhstan was deteriorating, with the views of the public not being taken into account and construction being carried out without compliance with rules on the environment, construction or health with no opportunity for the public to have access to impartial justice.

8. At its forty-eighth meeting (Geneva, 24-27 March 2015), the Committee reviewed the implementation of decision V/9i in open session, taking into account the comments received from the communicants and from observers present. Following the discussion in open session, the Committee commenced the preparation of its first progress review on the implementation of decision V/9i in closed session. The Committee adopted its first progress review at its fiftieth meeting (Geneva, 6-9 October 2015) and instructed the secretariat to thereafter send it to the Party concerned and the communicants of communications ACCC/C/2004/1, ACCC/C/2004/2, ACCC/C/2004/6 and ACCC/C/2011/59.

### **III. Considerations and evaluation by the Committee**

18. In order to fulfil the requirements of the decision V/9i, the Party concerned would need to provide the Committee with evidence that:

(a) Mandatory requirements for the public notice are detailed by law, such as the obligation to inform the public in a timely manner and the means of public notice, including the obligation that any information relevant for the decision-making is also available on the website of the public authority competent for decision-making;

(b) There is a clear possibility for any member of the public concerned to submit any comments on the project-related documentation at different stages of the public participation process, without the requirement that these comments be reasoned;

(c) There is a clear responsibility of the relevant public authorities to:

(i) Inform the public promptly of the decisions they have taken and of how the text of the decisions can be accessed;

(ii) 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.

19. The Committee welcomes the first progress report of the Party concerned, which was submitted on time, and the information contained therein.

20. With respect to the recommendation in paragraph 7(a) of decision V/9i, the Committee notes that paragraph 8 of the Rules on Public Hearings (as revised 26 March 2013) requires that the announcement of a public hearing be published in the media, in state and Russian languages, no later than 20 days before the public hearing. The announcement is also to be posted on the website of the local executive bodies. The developer should also use other ways of informing the public (newsletters, displays, individual notice).

21. The Committee considers that paragraph 8 of the Rules on Public Hearings appears to meet the requirement to inform the public in a timely manner, and the means of notice. It does not however appear to ensure that any information relevant for the decision-making is available on the website of the competent public authority.

22. The Committee invites the Party concerned in its second progress report or otherwise by 31 December 2015 to show to the Committee how it has met the recommendation that it ensure any information relevant for the decision-making is available on the website of the competent authority, or if it does not yet have such a requirement, what action is proposed to do to meet this recommendation.

23. With respect to the recommendation in paragraph 7(b) of decision V/9i that the public should be entitled to submit comments at different stages, the Committee notes that paragraph 10 of the Rules on Public Hearings appears to meet this recommendation as it entitles the public to submit comments in paper or electronic form the date of the announcement of the public hearing. However, regarding the recommendation that the public may submit comments without them being necessarily reasoned, this does not appear to have yet been met. Paragraph 5 of the Rules of Public Hearings entitles the public to express their “reasoned” opinion only.

24. The Committee invites the Party concerned to delete the requirement in paragraph 5 of the Rules of Public Hearings that only “reasoned” opinions may be submitted and to provide the amended rule, together with an English translation thereof to the Committee once done.

25. With respect to the recommendation in paragraph 7(c)(i) of decision V/9i, the Committee takes note of proposed Article 57 which would provide for a requirement that the conclusion of state environmental expertise be published on the Internet site of the authorized body within three business days after signing. Having not been provided with the text of draft Article 57, the Committee cannot comment on whether the proposed provision would, as currently worded, fully meet the requirement of paragraph 7(c)(i) of decision V/9i. The Committee stresses, however, that in order to do so, it would be necessary for the legislation to clearly specify that all decisions subject to article 6 must be published on the website of the authorized body of the state environmental expertise and also, if the full text of the decision is not published on the website, to provide clear instructions of how the text of the decision can be accessed.

26. The Committee invites the Party concerned in its second progress report or otherwise by 31 December 2015 to provide the text of proposed Article 57 of the Environmental Code as well as any other legislative, regulatory or administrative measures aimed to implement recommendation set out in paragraph 7(c)(i) of decision V/9i, together with an English translation thereof.

27. With respect to the recommendation in paragraph 7(c)(ii) of decision V/9i, the Committee takes note of proposed Article 160 which would provide that an electronic version of environmental permits will be published on the State Register of Pollutant Release and Transfer. Having not been provided with the text of draft Article 57, the Committee cannot comment on whether the proposed provision would, as currently worded, fully meet the requirement of paragraph 7(c)(i) of decision V/9i. The Committee stresses, however, that in order to do so, it would be necessary for the legislation to clearly specify that not only the environmental permits themselves should be published on the State Register, but also 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.

28. The Committee invites the Party concerned in its second progress report or otherwise by 31 December 2015 to provide the text of proposed Article 160 of the

Environmental Code as well as any other legislative, regulatory or administrative measures aimed to implement recommendation set out in paragraph 7(c)(ii) of decision V/9i, together with an English translation thereof.

29. In the light of the considerations set out above, the Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9i, but welcomes the initial steps taken by the Party concerned to date in that direction.

#### **IV. Conclusions**

30. The Committee finds that the Party concerned has not yet fulfilled the requirements of decision V/9i, but welcomes the initial steps taken by the Party concerned to date in that direction.

31. The Committee invites the Party concerned, in its second progress report or otherwise by 31 December 2015, to:

- (a) Show to the Committee how it has met the recommendation that it ensure any information relevant for the decision-making is available on the website of the competent authority, or if it does not yet have such a requirement, what action it proposes to take to meet this recommendation;
- (b) Confirm that it has deleted or will delete the requirement in paragraph 5 of the Rules of Public Hearings that only “reasoned” opinions may be submitted and, thereafter, to provide the amended rule once adopted, together with an English translation thereof to the Committee;
- (c) Provide the text of proposed Articles 57 and 160 of the Environmental Code as well as any other legislative, regulatory or administrative measures aimed to implement recommendations set out in paragraphs 7(c)(i) and 7(c)(ii) of decision V/9i, together with English translations thereof.

32. The Committee reminds the Party concerned that the Meeting of the Parties have undertaken to review decision V/9i at its sixth session.

33. The Meeting of the Parties at its sixth session may, upon consideration of a report and any recommendations of the Committee, decide upon appropriate measures to bring about full compliance with the Convention in accordance with paragraph 37 of Decision I/7. The Meeting of the Parties may, depending on the particular question before it and taking into account the cause, degree and frequency of the non-compliance, decide upon one or more of the following measures:

- (a) Provide advice and facilitate assistance to the Party concerned regarding the implementation of the Convention;
- (b) Make recommendations to the Party concerned;
- (c) Request the Party concerned to submit a strategy, including a time schedule, to the Compliance Committee regarding the achievement of compliance with the Convention and to report on the implementation of this strategy;
- (d) In cases of communications from the public, make recommendations to the Party concerned on specific measures to address the matter raised by the member of the public;
- (e) Issue declarations of non-compliance;

- (f) Issue cautions;
  - (g) Suspend, in accordance with the applicable rules of international law concerning the suspension of the operation of a treaty, the special rights and privileges accorded to the Party concerned under the Convention;
  - (h) Take such other non-confrontational, non-judicial and consultative measures as may be appropriate.
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