

Remarks on information prepared by the Ministry of Energy of the Republic of Kazakhstan dated on October 31, 2016¹, in accordance with the paragraph 8 of the Decision V/9i of the Fifth Session of the Meeting of the Parties of the Aarhus Convention.

Remark 1.

In the information prepared by the Ministry of Energy, it is said:

«5) natural and legal persons are exempt from lawsuit filing fees when submitting lawsuits to courts in regards of environmental matters».

Judicial practice of the Ecological Society «Green Salvation» shows that courts, including the Supreme Court, ignore the paragraph 10) of the Article 541 of the Tax Code of the RK, according to which a claimant is exempt from payment of the state fee because the claimant defends rights of undefined number of people.

Only in 2016, the Ecological Society had to pay the state fee six times, in order to file lawsuits in the interests of undefined number of people and the state. See: http://esgrs.org/?page_id=11726. Thus, the statement of the Ministry is not true.

Remark 2.

Judicial practice of the Ecological Society «Green Salvation» encounters violations of the sub-paragraph b) of the paragraph 4 of the Decision V/9i which states: «By not establishing consistent and clear legal requirements for making the information relevant to decision-making accessible for the public, the Party concerned fails to comply with article 6, paragraph 6, of the Convention».

Monitoring conducted by the Ecological Society shows that, for example, in 2016, only 45% of the inquiries of the Ecological Society to the state organs were answered, 55% of the inquiries were not answered. 74% of the received answers contained incomplete or unreliable information.

Remark 3.

Judicial practice of the Ecological Society «Green Salvation» demonstrates that recommendations indicated in the sub-paragraph c) of the paragraph 7 of the Decision V/9i, «to ensure that... 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» are not duly implemented in practice.

In 2016, all statements of the Ecological Society filed to courts, in relation to incomplete or unreliable information provided by state authorities, were left unsatisfied. See http://esgrs.org/?page_id=11726.

Till the present moment, the decision of the Review Board of the Supreme Court dated on November 27, 2013, which acknowledged inaction (omission) of the head of the Department of Sanitary and Epidemiological Control of the City of Almaty, is not implemented. This is taking place, in spite of an active position of the residents. For three years with the help of the Ecological Society, they are striving for implementation of the Supreme Court's decision. On August 3, 2016, by the claimants' statement filed in regards of this situation, the Review Board of the Supreme Court made a new determination satisfying the statement of the claimants.

Remark 4.

Article 167 of the Environmental Code of the RK «Denial to provide environmental information» was excluded from the Environmental Code, according to the Law of the RK dated on November 16, 2015, No. 404-V.

That includes recalled paragraph 4 which stated that:

«Refusal to provide, failure to provide, providing incomplete or unreliable environmental information, and also unlawful classification of public environmental information as information with limited access can be disputed in the high instance organ and (or) to an authority or in the court».

The exclusion of the Article 167 from the Environmental Code create significant difficulties for access to information and justice, despite of the Law of the RK «About access to information» adopted in November 2015.

¹ Adopted measures to account the recommendations of the Decision V/9i «On compliance by Kazakhstan with its obligations under the Convention in the law «About introduction of changes and additions to some legal acts of the Republic of Kazakhstan related to environmental matters».