

Observations of the Ecological Society "Green Salvation" to the interim report of the Republic of Kazakhstan to the Compliance Committee of the Aarhus Convention

Paragraph 1. The report says:

"1. Regarding the failure to paragraph 2 of Article 6, of the lack of requirement for timely information to the public and the lack of guidance other means of informing the public, other than the publication in the media:

Note that the Aarhus Convention does not set strict requirements on how to inform the public, "either by public notice or individually."

The public is informed in Kazakhstan for 20 days by publishing advertisements in the media and at the same time on the Internet site of the local executive body. (Rules of the public hearings, approved by order of the Minister of Environment of the Republic of Kazakhstan dated May 7, 2007 № 135-p).

Kazakhstan has created 13 Aarhus Centres. In 2014, in the regions funded activities to inform the population Aarhus Centres to hold public hearings on an individual basis (distribution of information leaflets, personal tour of houses, etc.). "

Remarks

1. The Convention speaks about the adequacy and effectiveness of public information. These ways of informing the report does not meet these requirements, because not everyone has access to the Internet, not all subscribe to newspapers and track the announcement of the public hearing.

Often people whose interests will affect the planned economic activity, do not put on notice conduct hearings with dummies, commit other violations.

2. The Convention requires notify citizens at a very early stage of decision-making procedures. In practice, people are informed after the decision is made by public authorities. Influence decision-making is almost impossible even in court.

Paragraph 2. The report says:

"2. Regarding the non-fulfillment of paragraph 6 of Article 6 of the lack of legislation in a coherent and explicit requirements to disclose information relevant to the decision-making information.

The rules of public hearings clearly articulated the following requirements:

Necessarily published address of the place where you can learn the material

EIA in paper form, online resource or email where you can download or request materials EIA electronically.

The structure of the project EIA is enshrined in the Environmental Code and has the following sections:

petition (application) on the need for implementation

planned activities, investment feasibility study, feasibility study (project), claims of the working draft explanatory memorandum;

description of the components of the environment before implementing any activity to date;

description of the project, including:

1) the purpose and quantitative characteristics of the whole project and the requirements for the placement area for a period of construction and operational phases;

2) the main characteristics of the production processes, including the type and quantity of materials and equipment with possible

impacts of the proposed activity on the elements of the environment with the amount of ingredient composition and emissions into the environment, consumption of raw materials and resources withdrawn;

- 3) an analysis of the technology used for compliance with the best available technologies and technical specific standards and conformity with technical regulations and environmental requirements to technology, machinery and equipment;
- 4) information on alternatives and an indication of the main reasons for the choice of project options;
- 5) a description of the possible impacts on the environment, public health and socio-economic conditions;
- 6) vague influence of planned economic and other activity on the environment;
- 7) assessment of the environmental risks and risks to public health;
- 8) a description of the measures envisaged to prevent, reduce environmental impacts, including proposals for environmental monitoring;
- 9) design standard emissions into the environment and standards of withdrawal natural resources;
- 10) The rationale for the program of industrial environmental monitoring;
- 11) ecological and economic assessment of the project taking into account the possible risks and redress;
- 12) materials on account of public opinion, designed protocols and containing the conclusions of the public discussion of the environmental aspects of the proposed activity;
- 13) indication of any difficulties and lack of information in the assessment of environmental impact;
- 14) The main findings of the assessment of environmental impact.

The draft law "On Amendments and Additions to Certain Legislative Acts of the Republic of Kazakhstan on environmental issues"

expected to expand the project EIA (article 41 of the Environmental Code), two sub-items:

justification of the action plan for the protection of the environment;
justification of waste management program. "

Remarks

1. While the amendments are not accepted, to talk about it prematurely.
2. In the "National Report on the implementation of" 2014 is recognized:
"Revision of the **Rules of the public hearings** (the order of the MEP from March 26, 2013 №50-on), which dropped to claim 21 (" Public hearings are held regardless of the number of present members of the public, including the public concerned, came at the appointed time ") **does not exclude the possibility of a formal public hearings without proper full consideration of the possible consequences of the proposed economic activity, ie, the basic principles of EIA** (p.p.2.5.2, 2.5.4, 2.5.6 Instructions EIA) and SER (Article 46 EC, Section 3 of the Rules of the GEE). "
(http://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2014&wf_Countries=KZ&wf_Q=QA&Quer_ID=&LngIDg=RU&YearIDg=2014)
We fully agree with these conclusions. During the time that has elapsed since the submission of the report, the situation has not improved.
2. Public hearings are conducted with gross violations of not only the Aarhus Convention, but also the rights of the public hearings.
For example, January 19, 2015 public hearings on the Environmental Impact Assessment section in the project "Construction of the road to the ski resort" Kokzhaylau " Classifieds in the newspaper "Evening Almaty" (12.23.14) for a hearing had the following contents:

The ad does not say:

- The public authority responsible for making decisions;
- Indication of the relevant public authority or any other official body, which may submit comments or questions, and the timing of comments or questions.

Organization of hearings.

Was chosen a small room that could not accommodate everyone. Many opponents of the construction could not get into the hall. If the organizers have not been able to foresee, so it was necessary to postpone the hearing to another time and another place.

As can be seen from the announcement, registration of the participants was to begin at 8 hours 30 minutes. But at 8 o'clock organizers hearing people filled the hall, which is organized brought to the venue of the hearing. These "advocates building" were planted so that there was not a space for opponents. As a result, opponents of the construction could only stand in the aisles, and the hallway outside. On the proposal to move the hearing organizers did not react.

Naturally, everyone could not speak.

Minutes of the public hearing

In accordance with the Aarhus Convention, public participation procedures should allow it at a public hearing to submit any comments, information, analyzes or opinions that it considers relevant to the proposed activity.

Despite the fact that the hearings were held with obvious violations and suggestions were made to abandon the construction of the road, the protocol is written:

"Public hearings are declared valid under the laws of the Republic of Kazakhstan ...

During the public hearings specific comments and suggestions to the section of the EIA has been received. "

3. Structure of the draft EIA is really fixed in the Environmental Code (Article 41), but this does not mean that, in practice, all these requirements are met, or that the public has access to the listed information. For example, in 2013 the public, including our organization, could not get to review the feasibility study for the construction of ski resort in the tract Kok Zhailau.

Paragraph 3. The report says:

"3. Regarding the non-fulfillment of paragraph 7 of Article 6, of the limit comments only at the stage of the EIA report of the state ecological expertise, as well as limiting the range of comments from the public only by those that contain a reasonable argument, the law does not guarantee the full rights under the Convention.

3.1 In Kazakhstan, public participation is not limited to comments on the draft EIA. In accordance with the Law on normative legal acts, developed a draft law at the same time to harmonize the interested state bodies are placed on the Internet site of the authorized body and anyone can submit comments and suggestions to the project.

3.2 When adopting the regulations in the Ministry of Justice and the Government necessarily applied certificate on account of public opinion.

3.3 The public can express their opinions through public environmental review and public environmental control, these provisions enshrined in the Environmental Code.

3.4 The Ministry of Energy is created and operate public council on environmental issues, which considers all the issues of ecology, including the ANP projects.

3.5 Law "On the order of consideration of physical and legal entities" regulated public relations related to the filing and consideration of physical and legal entities in order to realize and protect their rights, freedoms and legitimate interests. "

Remarks

1. Public participation in the drafting of legislation, strategies, policies, programs are often formal. There are no feedback mechanisms between decision-makers and the public on the issues. Not every "person can submit comments and suggestions on these projects," because many do not have access to Internet resources. Even in the "National Report on the implementation of" 2011 admits: "Experience shows that to date in Kazakhstan many aspects of public participation in law-making does not have legislative recognition ... As a result, the public often does not have a real opportunity to participate in the process of law-making except some isolated cases "(p.40). Since then, the situation has not changed.

There are no mechanisms of public opinion on any of the above items. The public's right to participate in the decision-making process, as recognized in the Environmental Code, cannot be realized, since so far no mechanisms for its implementation.

2 .. "3.3 The public can express their opinions through public environmental review."

However, it is advisory in nature and cannot be taken into account by public authorities: "3. Conclusion of PEA **can** also be taken into account when making decisions by local executive bodies, financial institutions and the customer of planned activity "(Article 67, item 3 Environmental Code).

Item 4. The report says:

"3. Regarding the non-fulfillment of paragraph 9 of Article 6, of the lack of proper procedures promptly notify the public of the conclusions of the environmental impact assessment and appropriate mechanisms to facilitate public access to such decisions.

Currently, the Parliament of the Republic of Kazakhstan introduced a bill on amendments and additions to the legislation on the Aarhus Convention. In the development of this bill was attended by NGOs, individuals who have submitted more than 10 proposals. This bill was discussed at three times the Public Council of the Ministry.

The bill provides for the following amendments to the Environmental Code:

Article 57 provides for the norm to publish on the Internet site of the authorized body of the state environmental expertise within three business days after signing;

Article 160 provides that information as part of the State Register of Pollutant Release and Transfer will be posted on the Internet site an electronic version of the issue environmental permits.

In the implementation of this law provides additional regulations that will regulate in detail the issues of access to information and participation in decision-making.

Please take into account the ongoing work to improve the legislation in terms of alignment with the Aarhus Convention. "

Remarks

1. While the bill on amendments and additions to the legislation on the Aarhus Convention is not accepted, it is premature to talk about, because it may be rejected or can be modified wording.

2. With the ratification of the Convention by the Republic of Kazakhstan was 13 years old. During this time, the public repeatedly raised the issue that the country lacks the mechanisms of public opinion. State officials also denied it and claimed consistently, including in official documents sent to the Committee that the legislation of the country brought into full compliance with the Aarhus Convention.

We are surprised by the new statement on the "improvement of the legislation in terms of alignment with the Aarhus Convention." Please note that in Kazakhstan there is a huge gap between the law and its practical application.

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