

Remarks on Kazakhstan's second progress report on its implementation of decision V/9i of the Meeting of the Parties to the Aarhus Convention.

### **General remarks**

We are not surprised by the new statements of the government officials that «a great attention is paid in Kazakhstan on access to information and participation in decision-making». In practice, changes introduced to the environmental legislation of the Republic of Kazakhstan, are still contradictory and unsystematic. Numerous changes and amendments introduced to the laws create new contradictions in the laws, reducing their effectiveness and impeding their practical application. There is still a huge gap between the rules enshrined in the legislation of Kazakhstan, and their practical application.

#### Access to the information.

The elimination of specialized Ministry of the Environment and transfer of many of its powers under the authority of the local executive bodies significantly worsened the situation with the access to information. For example, at the 30th UN Human Rights Council session held in September 2015, a report was presented by Başkut Tuncak, UN Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, on the results of his visit in Kazakhstan in spring 2015. He, in particular, pointed out:

«The Special Rapporteur noticed a significant level of mistrust of information produced by the Government and businesses among the general public and members of affected communities. Particularly troubling is that the self-monitoring information provided by businesses whose activities involve the production, use and disposal of hazardous substances and wastes is not subject to thorough verification» (A/HRC/30/40, paragraph 43).

«With regard to the limitation of information, the Special Rapporteur finds it problematic that, in accordance with article 167 (1) of the Environmental Code, requests for environmental information may be refused if the requested information is not available, especially considering that a lack of environmental information is considered to be a barrier to realizing the right to information» (A/HRC/30/40, paragraph 44).

<http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Pages/ListReports.aspx>.

Article 167 was supplemented by the Law of Republic of Kazakhstan of 31.10.15, № 378-V, and after sixteen days it was deleted from the Environmental Code by the Law of Republic of Kazakhstan of 16.11.15, № 404-VI

[http://online.zakon.kz/Document/?doc\\_id=30085593#pos=2914;-138&sel\\_link=1004840728](http://online.zakon.kz/Document/?doc_id=30085593#pos=2914;-138&sel_link=1004840728).

#### Access to the decision-making.

Public hearings are held with gross violations of not only the Aarhus Convention, but also the Rules of conduction of public hearings.

For example, 16 October 2015 the public hearing on assessment of the impact on the environment of the demolition of buildings in Almaty city (on the street Zheltoksan, 115) was held. The demolition

of buildings caused a wide resonance among the residents of the city and numerous publications in the press. « ... The greatest disturbance among activists caused the fact that the demolition of the building began before the Draft on the environmental impact assessment passed the state ecological expertise». The Regulation on the conduction of public hearings was violated. (<http://rus.azattyq.mobi/a/almaty-zhektoksan-115-zdanie-snosslushanie/27310197.html>, 16.10.2015).

#### Access to justice.

On the example of the legal actions of our organization, which is one of the few NGOs in Kazakhstan which protects the citizens' rights in the courts, could be seen numerous obstacles to the access to justice.

For example, in 2015 in connection with the failure to provide information or provision of false information, our organization filed lawsuits to the following public authorities: the Ministry of culture and sports, Committee of forestry and wildlife, Akimat (executive body) of Almaty, the Division of natural resources and environmental management of Almaty city, the Division of passenger transport and highways of Almaty region. In two cases, respondents provided information during the court proceedings. In other cases, our requirements were not satisfied, or claims were not accepted. Two lawsuits filed in connection with the illegal construction of the road to the ski resort "Kokzhaylau" were not accepted for consideration at the first time. After the submission of the private claims, one complaint was accepted, reviewed, and all allegations were denied. Under the other claim, the litigation continues: [http://esgrs.org/?page\\_id=7179](http://esgrs.org/?page_id=7179).

The Republic of Kazakhstan cannot provide the fulfilment of court decisions in the benefit of the public, including the decisions taken by the Supreme Court. For example, see

[http://esgrs.org/?page\\_id=7179](http://esgrs.org/?page_id=7179); Section 2, Implementation of judgments.

#### **Remark to Annex 1.**

##### **Remark 1.**

«Step 99. Outlined STRENGTHENING THE ROLE OF THE PUBLIC COUNCILS UNDER THE GOVERNMENT BODIES AND AKIMACH in the discussions on the implementation of the strategic plans and programs of development of territories; budgets, reports, achievement of the target indicators, draft laws and regulations affecting the rights and freedoms of citizens; drafts of the policy documents. Securing the status and POWERS OF THE PUBLIC COUNCILS by the law will increase transparency in the government's decision-making».

Law of Republic of Kazakhstan «On public councils» of 2 November 2015 № 383-V ZRK will enter into effect 1 January 2016.

The law does not provide anything new in principle for public participation in decision-making on matters relating to the environment, compared with the rights granted by the Aarhus Convention and the Environmental Code of the Republic Kazakhstan (Articles 13 and 14 of the Environmental Code).

In strict compliance with the rights granted by the Aarhus Convention and Environmental Code, public councils may become additional forum for the public dialogue with government authorities.

From the point of view of realization of the human rights to a healthy environment, the adoption of the law does not have practical meaning, because the legal mechanisms of public participation in decision-making in Kazakhstan are still not developed and adopted.

**Remark 2 to Annex 2.**

2. «Step 94. The introduction of the «Transparent Government». Development of the LAW ON ACCESS TO INFORMATION that will make available any information, held by the public authorities, except those relating to the state secrets and other information protected by law. Currently, the bill is under the consideration in the Parliament of the Republic of Kazakhstan.

The implementation of the above mentioned order of the President, deputies of the Majilis in the Parliament drafted a bill «**On access to information**», providing mechanisms similar to the mechanisms of the Aarhus Convention, but related to all information concerning the activity of state bodies, including environmental information. The bill is pending in Parliament».

Law of the Republic of Kazakhstan «On access to information» of 16 November 2015 № 401-V ZRK comes into force in the coming days. The law does not provide anything new in principle for public access to information concerning environmental issues, compared with rights granted by the Aarhus Convention and the Environmental Code of the Republic Kazakhstan (Articles 13, 14, 159-165 of the Environmental Code).

The law only declares the duty of the owner of information to provide a «complete and reliable information» (article 9, paragraph 2, subparagraph 3), but does not affect essentially the question of the quality of information provided. Unsatisfactory work of the government bodies, responsible for collecting information will continue to hinder the improvement of the quality and increasing the amount of the available information. Lack of funding of government agencies, also remains a serious obstacle to the collection of information.

Article 20 of the Law «On the liability for the breach of legislation of the Republic of Kazakhstan on access to information» does not disclose the specific types of violations and does not contain references to the specific legal provisions providing for liability. Therefore, illegal restriction of the right of access to information can be interpreted very broadly. In this regard, the fines imposed by the Law of Republic of Kazakhstan of 11.16.15, № 404-V in articles 78 and 456-1 of the Code on administrative violations of the Republic of Kazakhstan may be ineffective measure to prevent illegal restrictions on the right of access to information.

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Chairman of the Ecological Society "Green Salvation"

Kuratov S.G.