

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

**Second 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 since the Committee's first progress review

2. By letter of 20 October 2015, the secretariat sent the Committee's first progress review on the implementation of decision V/9i to the Party concerned together with a reminder to provide its second progress report to the Committee by 31 October 2015, and at the latest by 31 December 2015, on the measures taken and the results achieved in implementation of the recommendations set out in the decision V/9i.

3. The Party concerned provided its second progress report on the implementation of decision V/9i on 4 November 2015.

4. At the Committee's request, on 7 November 2015 the secretariat forwarded the Party concerned's second 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 27 November 2015.

5. On 24 November 2015, the communicant of communication ACCC/C/2004/6 provided its comments on the Party concerned's second progress report.

6. On 1 December 2015, the communicant of communications ACCC/C/2004/1 and ACCC/C/2004/2 provided its comments on the Party concerned's second progress report.

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

8. At its fifty-second meeting (Geneva, 7-11 March 2016), the Committee reviewed the implementation of decision V/9i in open session, taking into account the Party concerned's second progress report and written comments received from the communicants of communications ACCC/C/2004/1, ACCC/C/2004/2 and ACCC/C/2004/6 as well as the oral update provided by the Party concerned. Following the discussion in open session, the Committee commenced the preparation of its second progress review on the implementation of decision V/9i in closed session.

9. On 11 April 2016, the secretariat invited the Party concerned to submit by 18 April 2016 a written version of its statement to the Committee's fifty-second meeting, together with the text of its proposed legislative amendments and the timeline for their adoption.

10. On 18 April 2016, the Party concerned provided an update on its legislative developments together with the Russian and English texts of the proposed amendments to its Environmental Code.

11. The Committee continued the preparation of its second progress review at its virtual meeting on 13 May 2016, taking into account the additional information provided by the Party concerned on 18 April 2016.

12. On 31 October 2016, the Party concerned provided its third progress report and on 18 November 2016, the communicant of ACCC/C/2004/1 and ACCC/C/2004/2 provided its comments thereon.

13. At its fifty-fifth meeting (Geneva, 6-9 December 2016), the Committee held an open session on the implementation of decision V/9i, in which representatives of the Party concerned took part both in person and by audio conference. Though invited, the communicants of communications ACCC/C/2004/1, ACCC/C/2004/2, ACCC/C/2004/6 and ACCC/C/2011/59 did not take part in the session.

14. After taking into account the Party concerned's third progress report, the communicant's comments of 18 November 2016 and the information provided during the open session at the fifty-fifth meeting, the Committee adopted its second progress review 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.

Party concerned's second progress report

15. In its second progress report submitted on 4 November 2015, the Party concerned reported on a number of legislative and administrative developments regarding access to information and public participation in decision-making regarding environmental matters.

16. With respect to paragraph 7(a) of decision V/9i, the Party concerned stated that the new article 57-2 of the Environmental Code "Conduction of the public hearings" would require that, twenty days before public hearings, local executive bodies provide the public with access to environmental information relating to the environmental impact assessment of planned economic and other activities and decision-making process for this activity through the online resource, as well through other means (notices of public hearings are published in local newspapers). It also added that, in accordance with paragraph 7 of article 15 of the Law "On normative legal acts", draft regulations that affect the interests of private entrepreneurs, are subject to mandatory publication in the media, including through internet resources, prior to their consideration by the relevant authority, or at the meeting of the expert council.

17. Regarding paragraph 7(b) of decision V/9i, the Party concerned stated that the new article 57-1 "Public participation in decision-making on environmental issues" provided a variety of opportunities for public participation in decision-making on environmental issues: public hearings; public environmental review; public environmental control; the submission of comments and suggestions to state authorities during state ecological examinations; the organization of public environmental councils in state bodies; and the submission of comments and suggestions on draft regulations on the protection of the environment, including draft documents of state planning. The Party also reported that the new article 57-2 of the Environmental Code set out a list of projects for which public hearing was required. Public hearings were required to be held on projects concerning, inter alia, agriculture and forestry, mining and manufacturing, construction, transport, electricity, heating, water supply, sewerage, waste management, and other types of economic activity on the list determined by the authorized body in the field of environmental protection.

18. With respect to paragraph 7(c) of decision V/9i, the Party concerned stated that the following amendment were to be introduced into the Environmental Code:

- (a) Article 163 would require local executive bodies to post on their website, annually before 1 May of the year following the reporting period, information on: budget revenues from fees for the environmental emissions and budget expenditures for measures to protect the environment. In addition, the authorized body in the field

of environment would be required to post on its website, annually before 1 May of the year following the reporting period, information on: revenues from recovery of damage caused to the environment and fines for violation of environmental legislation.

(b) New article 160 “National Pollutant Release and Transfer Register” would require the publication of relevant information from users of natural resources.

(c) The database of the State Fund of environmental information was to be considerably increased. The information was to be provided free of charge.

19. The Party concerned also reported that new article 57 of the Environmental Code introduced an obligation to publish the results of the state environmental expertise on the website of the local executive authorities within five working days¹ from the date it is received by the project proponent. In addition, a right to challenge the result of the state ecological expertise in court has been introduced.

20. Pursuant to the Rules for Public Hearings, approved by order of the Ministry of Environment dated 7 May 2007 No. 135-p, the protocol of a public hearing is to be published on the website of the local executive authority no later than five working days after the date of the public hearing. The public who had participated in the public hearing is entitled to submit comments on the content of the protocol of the public hearing to the local executive authority which organized the hearing within seven calendar days from the date of the protocol’s publication. Pursuant to the Law “On the order of consideration of requests from physical and legal entities”, if a member of the public requested an amendment to the protocol, the local executive body would amend the protocol or, if it rejected the request, indicate the reasons for the rejection. The protocol of the public hearing incorporating the public’s suggestions and comments was to be published on the website of the local executive authority. If a member of the public disagreed with how its comments on the protocol had been taken into account, it was entitled under the civil procedure law to bring an appeal to the court within ten days of receiving the response from the local executive body.

21. The Party concerned stated that, in addition, in 2015 the President of Kazakhstan had identified five institutional reforms to meet the objectives of the New Economic policy “Nyrlyzhol”, one of which was the creation of transparent and accountable government. One of the mechanisms for the creation of transparent and accountable government was to ensure the transparency of the decision-making process. The President had identified 100 concrete steps for implementation of the five reforms. Step 99 aimed to strengthen the role of public councils in order to discuss implementation of strategic plans and programs of territorial development, including budgets, reports, achievement of target indicators, draft normative legal acts affecting the rights and freedoms of citizens and draft policy documents. Step 94 concerned the introduction of “Open Government”.

22. The Party also reported on the draft Law “On Access to Information”, which was currently under consideration by the Parliament. The draft law would make publicly accessible all information held by public bodies, except that classified as a state secret or otherwise protected by law.

23. The Party concerned also reported on the draft Law "On Introduction of changes and additions to the legislative acts of the Republic of Kazakhstan on environmental issues" that, inter alia, was aimed to implement the Convention and introduce amendments and

¹ In the table annexed to its second progress report received on 4 November 2015, this period is stated to be three working days. However, in the text of article 57 submitted by the Party concerned on 18 April 2016, the period is stated to be five working days.

additions to the Environmental and Tax Codes. The bill was currently pending in the Lower House of Parliament.

24. With respect to access to environmental information, the Party concerned stated that the Environmental Code introduced article 161 which obliged the transfer of environmental information to the State Fund of environmental information. It reported that lists (registers) of environmental information were published on the State Fund website. The Party concerned reported that article 166-1 of the Environmental Code established the mandatory annual preparation and publication of a national report on the state of environment and use of natural resources. It also reported that there was free access to normative documents. The Party concerned stated that, pursuant to the Resolution of the Government of October 2013, the website "Adilet" was to be used for the official publication of all regulations. It currently contains 170,000 normative documents including legal acts, ministerial orders and decisions of local authorities. According to the Party concerned, there was a regulatory database "EkoInfoPravo" in the field of environmental protection and nature use where documents were catalogued according to the headings of the Environmental Code.

25. Regarding public participation in decision-making, the Party concerned reported that in order to ensure public participation in decision-making, in addition to the new article 57-1 of the Environmental Code, the Ministry of Energy was conducting regular monitoring of public hearings as a result of which akimats were being given recommendations for improvement. In addition, with the financial support of the OSCE, the work of the Aarhus Centers was being improved.

26. In relation to access to justice, the Party concerned reported that article 14 of Environmental Code allowed the public to go to court to protect the rights, freedoms and legitimate interests of individuals and legal entities concerning the protection of the environment and use of natural resources, including with respect to the interests of an indefinite number of persons. Article 58 of the Environmental Code allowed stakeholders to resolve issues of controversy concerning the conclusion of the state ecological expertise by means of negotiation. Article 541 of the Tax Code exempted claims regarding the protection of rights, freedoms and lawful interests of individuals and legal entities regarding the protection of environment and use of natural resources from the payment of state fees, including at the interest of an indefinite number of persons.

27. In its update provided on 18 April 2016, the Party concerned informed the Committee that Law № 491-V LRK of the Republic of Kazakhstan "About amendments and additions to some legislative acts of the Republic of Kazakhstan on environmental issues" which, inter alia, aimed to implement the Convention) had been signed by the President of Kazakhstan on 8 April 2016 ("Law on amendments"). The Party concerned also provided Russian and English versions of draft articles 57, 57-1, 57-2 of the Environmental Code.

Comments on the Party concerned's second progress report

28. In its comments of 1 December 2015, the communicant of communications ACCC/C/2004/1 and ACCC/C/2004/2 stated that with respect to the Party concerned's Step 99 (see para. 21 above) Law № 383-V "On Public Council" of 2 November 2015 would enter into effect on 1 January 2016 but did not provide anything new for public participation in decision-making related to the environment, compared with the rights granted by the Convention and articles 13 and 14 of the Environmental Code. The communicant submitted that the adoption of the Law had no practical meaning because the legal mechanisms of public participation in decision-making were still not developed or adopted.

29. With respect to Step 94 “Open Government” (see para. 21 above), the communicant submitted that Law № 401-V “On Access to Information” of 16 November 2015 would shortly enter into force, but it provided nothing fundamentally new regarding access to public information relating to the environment, compared with rights granted by the Convention and articles 13, 15 and 159-165 of the Environmental Code. The communicant stated that the Law only set out the obligation of the owner of information to provide “full and reliable information” (article 9, paragraph 2, subparagraph 3), but did not address the quality of the information provided. The communicant submitted that the unsatisfactory work of the government bodies responsible for collecting information would continue to hinder the quality and volume of information available. The communicant noted that underfunding of government agencies remained a serious obstacle to the collection of information. The communicant also stated that article 20 of the Law (which dealt with liability for breach of the legislation on access to information) did not identify the specific types of violations nor contain references to specific legal provisions providing for liability. According to the communicant, this meant that illegal restrictions on the right of access to information might be interpreted very broadly. The communicant also submitted that the fines introduced by articles 78 and 456-1 of the Code of Administrative Offences might be ineffective measures to prevent illegal restrictions on the right of access to information.

30. The communicant noted that the liquidation of the specialized Ministry of the Environment and the related transfer of many of its powers to the local executive bodies had significantly worsened the situation regarding access to information. The communicant referred to paragraphs 43 and 44 of the 2015 report of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, which noted a significant level of mistrust among the general public and members of affected communities of information produced by the Government and businesses.

31. With respect to public participation in decision-making, the communicant stated that public hearings were held with gross violations not only of the Convention, but also of the Rules for Public Hearings. By way of example, the communicant reported that on 16 October 2015 a public hearing on the assessment of the environmental impact of demolition of buildings in the city of Almaty had been held but the procedure for conducting public hearings was not followed² and demolition of the buildings began before the project environmental impact assessment had passed the state ecological examination.

32. Regarding access to justice, the communicant reported that it had submitted lawsuits concerning the failure to provide information or the provision of false information by the Ministry of Culture and Sport, the Committee for Forestry and Wildlife, Akimat (executive body) of Almaty, Administration of Natural Resources and Environmental Management of Almaty, Administration of Passenger Transport and Highways of Almaty region. The communicant stated that in two cases the information was provided during the court cases while in the other cases, requests were not satisfied, or the lawsuits were not accepted. The communicant stated that the Party concerned does not have measures to ensure the implementation of decisions taken by the courts in the public benefit, including decisions of the Supreme Court.³

33. In its comments of 24 November 2015, the communicant of communication ACCC/C/2004/6 stated that the response for requests for information can take years of correspondence with various state agencies of different levels and in the end, the

² Article in newspaper available from, <http://rus.azattyq.mobi/a/almaty-zhektoksan-115-zdanie-snos-slushanie/27310197.html>

³ Analytical information of NGO Green Salvation, available from http://esgrs.org/?page_id=7179

information might not be provided. The communicant stated that there was a problem with the way information was generated. The communicant also stated that the ecological situation in the Zhetysu district of Almaty city was deteriorating every day but the official response by ecologists and the prosecutor's office to complaints from the public was that no violations had taken place.

Party concerned's third progress report and subsequent information

34. In its third progress report submitted on 31 October 2016, the Party concerned reiterated that it adopted a whole range of measures, via the Law on Amendments of 8 April 2016 (see paragraph 27 above). The Party concerned also provided a table in which it linked the provisions of the Law on Amendments to the paragraphs of decision V/9i that they were intended to implement.

35. With regard to paragraph 4(a) and paragraph 7(a) of decision V/9i, the Party concerned repeated the reference to article 57-2 of the Environmental Code already mentioned in the second progress report (see paragraph 16 above). The Party concerned further added that the operator is required to negotiate with the public authority as to the time and place of the public hearing, concerning a preliminary list of the public concerned and with regard to the most effective manner of informing, referring to advertisement in the media, newsletters, stands and written requests. The public authority must approve all the foregoing and identify the individual responsible for conducting the hearing. The operator shall further notify the public concerned, in both Kazakh and in Russian, at least twenty days prior to the hearing and submit the notification also to the public authority to be published on its website.

36. With regard to paragraph 4(b) and paragraph 7(c)(i) and (ii) of decision V/9i, the Party concerned reported that, firstly, the regulation on public hearings requires that the local executive bodies publish on their websites the name of the public authority conducting the state ecological expertise, information on the operator, the website where the project documentation is to be found, information on operator documentation, the date, time and venue of public hearings, the comments of the public concerned and replies of the operator thereto as well as the protocol of public hearings.

37. Secondly, the Party concerned noted that public participation for environmental protection programmes and policies is not governed by article 57-2 of the Environmental Code but rather by article 57-1, paragraph 7, of the Environmental Code and the following acts:

- paragraph 62 of the Decree of the President No 827 "On the System of state planning in the Republic of Kazakhstan", dated 18 June 2009 (from now on Decree 827), which defines inter alia representatives of the public, academic and private organizations as well as individuals as participants in the state planning process.
- article 18 of the Law "On Legal Acts" of 6 April 2016, which regulates further public participation in the development of state planning systems
- Order No 22 on placement and public discussion of draft concepts of bills and draft regulations on the website of public regulations, approved by order of the Minister of Information and Communications on 30 June, 2016 (hereinafter Order No 22) further determine the discussion of draft laws and regulations. In accordance with the Order No 22, draft regulations must be posted on the government portal entitled "electronic government" together with explanatory notes and comparative tables in the Kazakh and Russian languages. For at least 10 working days after publication on the portal, public discussion is conducted and all comments and suggestions received are published. Within three working days of completion of the public discussion, the state developer shall consider the comments and suggestions received and decide whether

to accept or reject them indicating a justification. Subsequently, the responsible authorities prepare and publish a preliminary version of the report on the completion of the public discussion of the draft including the comments and proposals of the public, the number of comments in favour and against as well as number of comments and suggestions accepted and rejected.

38. Thirdly, the Party concerned submitted that another instrument for public participation in decision-making are the public councils of government bodies, to which any citizen of Kazakhstan can apply to become a member. The Party concerned refers in that regard to the Commission on Ecology, consisting out of 14 NGO representatives, as well as the Commission on Environment, established in February 2016, as well as some issues discussed recently by the latter Commission.

39. With regard to paragraph 4(c) and 7(b) of decision V/9i, the Party concerned referred, as in its second progress report, to article 57-1 and 57-2 of the Environmental Code (see paragraph 17 above).

40. With regard to paragraph 4(d) of decision V/9i, the Party concerned referred, as in its second progress report, to the requirement in article 57 of the Environmental Code to publish the state environmental expertise online (see paragraph 19 above) as well as to the obligation in the Rules for Public Hearings to publish the protocol of the public hearing (see paragraph 20 above).

41. During the audioconference held during the open session on decision V/9i at the Committee's fifty-fifth meeting (6-9 December 2016), the Party concerned referred to the Normative Resolution of the Supreme Court of the Republic of Kazakhstan N8 of 25 November 2011 which it stated had been adopted to enhance the efficiency of application of environmental legislation of the Republic of Kazakhstan.

Comments on Party concerned's third progress report

42. In its comments of 23 November 2016, the communicant of communications ACCC/C/2004/1 and ACCC/C/2004/2 submitted that in its experience, courts of the Party concerned, including the Supreme Court, do not apply article 541, paragraph 10 of the Tax Code referred to by the Party concerned (see paragraph 26 above). While in accordance with this provision a claimant should be exempted from payment in lawsuits in the interests of an undefined number of people, the communicant submits that it had had to pay the state fee six times in 2016 with regard to such claims.

43. With regard to paragraph 4(b) of decision V/9i, the communicant alleged that in 2016 only 45% of its inquiries to state organs of the Party concerned were answered and that of the answers received, 74% contained incomplete or unreliable information.

44. With regard to paragraph 7(c)(i) of decision V/9i, the communicant submitted that judicial practice shows a failure to ensure that there is a clear responsibility on the public authorities to promptly inform the public of decisions taken and where they can be accessed. The communicant submits that all its claims filed to the courts in 2016 with regard to incomplete or unreliable information have not been satisfied. The communicant submitted in that regard that a decision of the Review Board of the Supreme Court concerning an omission by the Department of Sanitary and Epidemiological Control of the City of Almaty dated 27 November 2013 has to date not been implemented. The communicant reported that on 3 August 2016, the Review Board made a new determination confirming the claims.

45. The communicant further submitted that the Law № 401-V "On Access to Information" of 16 November 2015 removes article 167 from the Environmental Code, which stated: "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) before an authority or in the court.” The communicant stated that the exclusion of this provision creates significant difficulties for access to information and justice, despite the new Law № 401-V “On Access to Information.”

III. Considerations and evaluation by the Committee

46. 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.

47. In its first progress review, which reviewed the Party concerned’s first progress report and the comments received from communicants on that report, the Committee invited 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.

48. The Committee welcomes the second and third progress reports of the Party concerned, which were submitted on time, and the information contained therein, as well as the comments received from the communicants of communications ACCC/C/2004/1, ACCC/C/2004/2 and ACCC/C/2005/6.

49. As an initial point, the Committee notes that both the Party concerned and the communicants have reported on a number of legislative, political and factual developments

which are not directly related to issues within the scope of decision V/9i. While the Committee has noted the information provided, it will not examine these matters further in the context of its review of the implementation of decision V/9i.

50. With respect to paragraph 7(a) of decision V/9i, the Committee recalls paragraphs 20 and 21 of its first progress review in which it found that rule 8 of the Rules on Public hearings (as revised 26 March 2013) appears to meet the requirements to inform the public in a timely manner, and the means of public notice. The Committee notes, however, that the Rules on Public Hearings (as revised in 21 June 2016) does not [establish][set out] the required content of the public notice. Nor does any other provision include a requirement that the public be informed of their opportunities to participate, other than to attend the public hearing itself, as required by article 6, paragraph 2(d)(ii) of the Convention. For example, there is no requirement for the public notice to specify any opportunities that the public may have to submit written comments before or after the hearing. The Committee therefore recommends the Party concerned to insert a clear requirement in its legal framework setting out the required content of the public notice, which should *inter alia* include the other opportunities for the public to participate besides the hearing itself, for example, the opportunity for the public to submit written comments and the time-frames for doing so.

51. Also regarding paragraph 7(a) of decision V/9i, the Committee notes that the new Article 57-2, paragraph 3 of the Environmental Code requires local executive bodies to provide open access to ecological information twenty days prior to the hearing. Article 57-2 also requires that certain information, namely the “environmental impact assessment, the planned economic and other activity and decision-making process on this activity”, must be made available through an internet resource and other sources of information. However, article 6, paragraph 6 of the Convention requires that “all information relevant to the decision-making” (and not just ecological information) is to be made available, including at least the information listed in subparagraphs (a)-(f) of article 6, paragraph 6. In addition, paragraph 7(a) of decision V/9i requires the Party concerned to introduce a mandatory requirement in its law to ensure that the relevant information is made available by the public authority competent for the decision-making, even if it is also made available elsewhere, e.g. on the developer’s website, in parallel.

52. Based on the above, while welcoming the adoption of the new Article 57-2 of the Environmental Code, the Committee considers that it does not fully meet the requirement of paragraph 7(a) of decision V/9i to introduce a mandatory legal requirement to ensure that the public authority competent for the decision-making gives the public concerned access to all information relevant to the decision-making. The Committee accordingly finds that the Party concerned has not yet fully met the requirements of paragraph 7(a) of decision V/9i.

53. Regarding paragraph 7(b) of decision V/9i, the Committee welcomes the adoption of the new Article 57-1 of the Environmental Code which establishes the right to submit comments and suggestions to the public authorities during the process of state environmental expertise without a requirement that those comments be reasoned. At the same time, however, the Committee notes that the Party concerned has not provided any evidence to demonstrate that it has deleted the requirement in paragraph 19 of the Rules of Public Hearings stipulating that only “reasoned” opinions may be submitted. The Committee accordingly finds that the Party concerned has not yet fully met the requirement of paragraph 7(b) of decision V/9i.

54. In relation to paragraph 7(c)(i) of decision V/9i, the Committee welcomes the new Article 57, paragraph 3, of the Environmental Code which requires that the results of state environmental expertise to be published on the website of the local executive authorities. However, the Committee notes that the provision’s requirement that the results of state environmental expertise be published within five working days after its receipt by the

project proponent does not necessarily meet the requirement to inform the public promptly of the decisions taken. The Committee considers that the starting point for calculating the time period for informing the public of the results of state environmental expertise should be the date of issuing the respective expertise conclusion by the competent authority, rather than date of its receipt by the project proponent. For this reason, while welcoming the progress made, the Committee finds that Article 57 paragraph 3 does not fully meet the requirements of paragraph 7(c)(i) of decision V/9i.

55. With respect to paragraph 7(c)(ii) of decision V/9i, the Committee welcomes the adoption of Article 161 of the Environmental Code and the searchable internet resource “Adilet” established by government resolution of October 2013, which contains a large number of normative documents including legal acts, ministerial orders and decisions of local authorities. The Committee also welcomes the regular monitoring of public hearings conducted by the Ministry of Energy aimed at improving the relevant practice of akimats. However, the Committee does not consider that the Party concerned has yet specifically addressed the requirement in paragraph 7(c)(ii) of decision V/9i to maintain and make publicly accessible lists or registers of the decisions taken to permit decisions subject to article 6 of the Convention, together with evidence of having fulfilled the requirements of article 6 with respect to those decisions. The Committee thus finds that the Party concerned has not fully addressed the requirements of paragraph 7(c)(ii) of decision V/9i.

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

IV. Conclusions

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

58. In order for the Committee to prepare its report to the sixth session of the Meeting of the Parties on the implementation of decision V/9i, the Committee invites the Party concerned to provide by 31 January 2017:

(a) With respect to paragraph 7(a) of decision V/9i, the text of any legislative, regulatory or administrative measures by then adopted, together with an English translation thereof, that sets out the required content of the public notice for the decision-making procedure on an activity subject to article 6 of the Convention which would clearly specify the opportunities for the public to participate besides the hearing itself, for example, the opportunity for the public to submit written comments and the time-frames for doing so;

(b) Also with respect to paragraph 7(a) of decision V/9i, the text of any legislative, regulatory or administrative measures by then adopted, together with an English translation thereof, that require the public authority competent for the decision-making procedure on activity subject to article 6 of the Convention to give the public concerned access to all information relevant to the decision-making, including at least the information set out in paragraphs (a)-(f) of article 6, paragraph 6 of the Convention;

(c) Regarding paragraph 7(b) of decision V/9i, confirmation that the requirement in rule 5 of the Rules of Public Hearings that only “reasoned” opinions may be

submitted has been deleted, as well as the text of the amended rule once adopted, together with an English translation thereof;

(d) With respect to paragraph 7(c)(i) of decision V/9i, the text of any legislative, regulatory or administrative measure by then adopted, together with an English translation thereof, amending Article 57, paragraph 3 of the Environmental Code so that the timeframe for making the conclusion of the state environmental expertise available to the public is calculated from the date the decision is taken and not from the date it is received by the project proponent;

(e) In accordance with paragraph 7(c)(ii) of decision V/9i, the text of any legislative, regulatory or administrative measures by then adopted, together with an English translation thereof, that require public authorities to maintain and make publicly accessible lists or registers of copies of the decisions taken and other information relevant to the decision-making to permit activities subject to article 6 of the Convention, including evidence that the requirements of article 6 have been fulfilled with respect to each such decision.

59. The Committee informs the Party concerned that all measures necessary to implement decision V/9i must be completed by, and reported upon by no later than 31 January 2017, as that will be the final opportunity for the Party concerned to demonstrate to the Committee that it has fully met the requirements of decision V/9i.
