Justice out of sight

Alternative report on the implementation of the Aarhus Convention

Kazakhstan 2017

ARNIKA

TRANSITION

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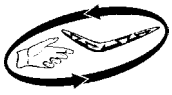




List of abbreviations:

AC	Aarhus Convention
CCP	Code of Civil Procedure
EC	Environmental Code
EIA	Environmental Impact Assessment
EO	Environmental organization
MEP	Ministry of Environmental Protection
NGO	Non-governmental organization
NLA	Normative legal act
PA	Public Association
PER	Public Environmental Review
PRTR	Pollutant Emission and Transfer Register
RK	Republic of Kazakhstan
SER	State Environmental Review
SIEC	Specialized Interdistrict Economic Court

Author, editor: Svetlana Mogiluk (ECOM, Pavlodar)

Contributors: Shynar Izteleuova (Zhayik-Caspian Aarhus Centre, Atyrau), Nadezhda Safonova (Aarhus Centre of East Kazakhstan Region, Ust-Kamenogorsk), Vadim Ni (Ecoforum of the Republic of Kazakhstan), Sergey Kuratov (Green Salvation, Almaty), Sergey Solyanik (Crude Accountability Kazakhstan), Anna Andreichuk (Ecomuseum of the Karaganda region).

Photo: Civic initiative "Do not poison my Pavlodar!", Mikhail Kaimirassov, Martin Plocek/Arnika, Majda Slamova/Arnika, Ondrej Petrlik/Arnika, Green Salvation
Translation and proofreading: Jiri Tichy, Veronika Rackova
Design: www.typonaut.cz

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Contents

1. The process of preparing the report

This report was prepared by the Working Group on Public Participation of the Ecoforum of Kazakhstan with the support of the international project "Enforcing Citizens' Rights and Public Participation in Decision-Making on Environmental Issues - Practical Implementation of Aarhus Convention in Mangystau".

Section 8.7 of this report is prepared by the Ecological Society "Green Salvation".

In the preparation of parts of the report participated: Svetlana Mogiluk (Public association "ECOM", Pavlodar), Shynar Izteleuova (Zhayik-Caspian Aarhus Centre, Atyrau), Nadezhda Safonova (Aarhus Centre of the East Kazakhstan, Ust-Kamenogorsk). Comments were submitted by Vadim Ni, Ecoforum of the Republic of Kazakhstan and a number of other experts and NGO representatives.

The decision on the need to prepare this report is based on the dissatisfaction of the public with the preparation process and the content of the national implementation report prepared by the Ministry of Energy of the Republic of Kazakhstan.

During the preparation of this national implementation report, a presentation of the draft was held on July 15, 2016 at the Round Table "Implementation of the Aarhus Convention in Kazakhstan". However, the presentation showed at the round table can hardly be regarded as a draft report, rather as information on what is planned to be included in this report. Public comments were not properly taken into account even in the declaration of this round table. In addition, the round of the public that participated at the round table was very limited and represented mainly by the Aarhus Centres. The comments provided during the web conference organized by the National Aarhus Centre were also not fully taken into account, and also the general public was not invited to participate at this conference. The limited opportunity to present comments of the civil society in the national implementation report was the main reason for preparing an alternative report.

This report provides an overview of the measures taken by the state authorities and an assessment of their effectiveness and compliance with the standards of the Aarhus Convention from the perspective of the public.

In 2015, mass public dissent raised against the construction of the hazardous waste incinerator in Pavlodar. The city has the most polluted air in Kazakhstan. More than 100 thousand people signed the petition against the project and many participated in public hearing. The public authorities decided to listen to public opinion and cancelled the project.

Photo: Do Not Poison My Pavlodar! Campaign
Other pics: http://pavon.kz/page/netzavodu

2. Legislative, regulatory and other measures to implement the general provisions of article 3, paragraphs 2, 3, 4, 7 and 8

2.1 Measures to ensure that officials and government agencies provide assistance and provide the required orientation.

The Ministry of Environmental Protection and Water Resources of the Republic of Kazakhstan, which until 2014 was the key agency responsible for the implementation of the norms of the Aarhus Convention in Kazakhstan, was abolished. The issues of environmental protection, nature management, protection, control and supervision over the rational use of natural resources, handling of municipal waste, development of renewable energy sources, control over the state policy for the development of the "green economy" have been transferred to the competence of the Ministry of Energy of the Republic of Kazakhstan.

The National and 14 Regional Aarhus Centres have been established in the cities of Astana, Almaty and Shchuchinsk, in East Kazakhstan, West Kazakhstan, North Kazakhstan, South Kazakhstan, Pavlodar, Karaganda, Kyzylorda, Kokshetau, Atyrau and Mangystau Regions. However, there is no single normative legal or methodological basis for the activities of these centres. Aarhus Centres do not have a unified strategy and do not receive financial support from the state.

An analysis of their activities shows that even not all Aarhus Centres are focused on providing support to involved parties in implementing the norms of the Aarhus Convention[1]. In addition, there are often attempts to substitute this wide public participation in discussion and decision-making only for the participation of representatives of the Aarhus Centres.

Effectiveness of the measures taken and problems of implementing the norms of the Convention

Substantial obstacles to the effective implementation of the norms of the Aarhus Convention are the continuous changes in environmental legislation. Since the adoption of the Environmental Code (hereinafter EC), over the past 10 years of its existence, it has been subject to changes and additions[2] 51 times.

The same continued in the reporting period. In 2014, changes were introduced 10 times, in 2015 - 6 times and in 2016 - 7 times. Such instability of the legislation creates difficulties in its application. And one can see that some articles are one day introduced, then they are cancelled. This was the case, for example, with Article 57 (3) of the EC that „Environmental protection plans developed for Category I and II facilities for obtaining permits for emissions into the environment are subject to public hearings." This provision was introduced in 2011, but in 2016 disappeared from the Environmental Code, under the pressure of business associations, weakening the ability of the public to participate in the discussion of plans and programmes.

The absence of objective criteria for determining the objects for which public participation procedures should be conducted in the existing "List of economic activities, for which there is a need to hold public hearings", negatively affects the participation of the public in the decision-making process. Very often, projects for minor changes are made for hearings: reconstruction or construction of new facilities that will not cause significant environmental impact, but are located on the territory or in the structure of enterprises of the first category of danger. These processes are not interesting to the public and only create unnecessary bureaucratic procedures for business. On the other hand, the public is not involved in discussing issues that can have a significant impact on the environment and human health. In particular, on March 17, 2017, the lower house of the Parliament adopted amendments to the Environmental Code, which contradicts paragraph 20 of Annex I of the Aarhus Convention. They exclude compulsory public hearings on projects for which public participation is envisaged under the environmental impact assessment procedure.[3] With the final approval of these amendments under national legislation, public participation in decision-making under Article 6 of the Aarhus

1 http://aarhus.kz/ru/1-6/informaciya-o-rabote-orkhusskikh-centro/
2 http://online.zakon.kz/Document/?doc_id=30085593&show_di=1#pos=97;-2240
3 http://www.parlam.kz/ru/mazhilis/sent-to-the-senate

Ustyurt Plateau – unique landscape inhabited by antelopes, proposed for inscription on UNESCO World Heritage List, is endangered by plans to expand oil extraction. Several thousand people signed petition to protect Ustyurt in 2016, but the state oil company supported by the public authorities is getting fast one permission after another.

Photo: Majda Slamova/Arnika

Convention will be limited only to the "List of Economic Activities ..." approved by the Ministry of Energy Order No. 240 of June 10, 2016 and Annex I of the Aarhus Convention.

2.2 Measures to promote environmental education and awareness of environmental problems

The Law of the Republic of Kazakhstan of April 8, 2016 introduced amendments and additions to the Environmental Code concerning access to environmental information[4]:

1) establishment of the State Pollutant Release and Transfer Register (Article 160);

2) the composition of information of the State Environmental Information Fund has been extended (Article 160);

The preparation and publication of the National Report on the state of the environment and on the use of natural resources of the Republic of Kazakhstan are envisaged. At the time of preparation this report, a report for 2011 -2014 and a draft report for 2015 were available on the website of the National Environmental Report[5].

The standard of the state service "Provision of environmental information" was approved, Order No. 301 of the Minister of Energy of April 23, 2015 and the regulation of the

4 http://online.zakon.kz/Document/?doc_id=39364423#pos=0;901

5 http://ecodoklad.kz

state service "Submitting of Environmental Information", Order No. 369 of the Minister of Energy of May 22, 2015[6].

Effectiveness of measures taken and problems of implementation of the norms of the Convention

Meanwhile, the issues of environmental education have not been reflected either in the "Education Act"[7] of the Republic of Kazakhstan or in the State Program for the Development of Education and Science for 2016-2019, approved by Presidential Decree No. 205 of March 1, 2016[8].

In 2016, in the State Compulsory Standard of Higher Education, in the version of the Government Decree of 13. 05. 2016, No. 292, changes were made to the article "Requirements for the level of training of students" item 16[9]. As a result of these changes, the discipline "Ecology and sustainable development" is excluded from the cycle of compulsory disciplines and proposed as a component of choice. In this regard, not all higher education institutions and not in all specialties include this discipline in their curricula, which reduces the level of awareness of future environmental specialists.

2.3 Measures to ensure the appropriate recognition and support for environmental protection associations, organizations or groups

Article 14 of the EC and a number of other articles, which are defining the rights of the public, establish only the rights of public associations. Despite the fact that according to the Law of the RK "On Public Associations": "As public associations in Republic of Kazakhstan are recognized political parties, trade unions and other associations of citizens established on a voluntary basis to achieve their common goals, that do not contradict the law. In the Law, "On Non-commercial organizations" (N142 of January 16, 2001) a number of other legal forms of non-commercial organizations is specified.

Measures to take into account public opinion are not provided. Moreover, the public has weaker positions in this respect than business entities. For these entities the Government of the Republic of Kazakhstan prepared a Decree dated December 28, 2015 No. 1090 "On Approval of the Model Provisions on Expert Councils on Private Entrepreneurship"[10]. It is intended to receive expert opinions from accredited associations of private business entities and interested non-commercial organizations on drafts normative legal acts, drafts of international treaties of the Republic of Kazakhstan, as well as international treaties to which the Republic of Kazakhstan intends to become a party, affecting business interests. The presence of this mechanism allows accredited employers' or-

6 http://energo.gov.kz/index.php?id=3612

7 On Education, Law on Republic of Kazakhstan of 27 July 2007, No. 319-III, http://adilet.zan.kz/rus/docs/Z070000319_#z

8 On Approval of the State Programme for the Development of Education and Science for 2016-2019. Decree of the President of Kazakhstan of 1 March 2016 No. 205, http://adilet.zan.kz/rus/docs/U1600000205#z83

9 On Approval of the State Compulsory Standards of Higher Education on respektive educational levels. Decree of the Governmetn of Kazakhstan of 23 August 2012 No. 1080, http://adilet.zan.kz/rus/docs/P1200001080#z18

10 http://adilet.zan.kz/rus/docs/P1500001090

ganizations to block decisions aimed at improving the rights of the public. As it was, for example, with the ratification of the Protocol on PRTR, as well as a number of other changes including the Environmental Code.

Financial support for the implementation of the norms of the Aarhus Convention in 2014 - 2016 was not allocated.

Since 2012, at the national level, only four organizations have been supported by the relevant Ministry within the framework of the state social order: the PA Centre for Sustainable Development, the Centre for Sustainable Production and Consumption[11], Youth Public Association "Institute of Human Health"[12], NGO „Ecosphere".[13]

2.4 Measures to promote the application of the principles of the Convention at the international level

At present, no effective measures have been taken by state authorities to support public participation in international processes and forums. The public is informed in certain cases about certain activities and is allowed to participate. In many cases, there is no support for participation by the state. Only international organizations provide limited support, due to which the public still takes part in international processes.

2.5 Measures to ensure that persons exercising their rights under the Convention are not subjected to punishment, persecution or harassment

State bodies do not carry out works to identify and eliminate cases of punishment, persecutions or harassment of persons exercising their rights under the Aarhus Convention. However, it should be noted that there are cases when representatives of the public are subjected to punishment, persecution or harassment for their activity in decision-making processes. Most often, such cases are of a hidden nature and pressure does not directly relate to the expression of the opinion of the public. Such pressure is often carried out at the place of work of the activists, especially if they work in organizations financed from the state budget. But there are examples of a clear manifestation of pressure. For example, Akim of Aktobe region Berdybek Saparbayev threatened to bring to justice those who signed a petition against the extraction of potash in Aktobe[14,15].

11 http://energo.gov.kz/assets/old/uploads/files/2015/03/%D0%A2%D0%B5%D0%BC%D0%B0%D1%82%D0%B8%D1%87%D0%B5%D1%81%D0%BA%D0%B8%D0%B9%20%D0%BE%D1%82%D1%87%D0%B5%D1%82_%D1%80%D1%83%D1%81.pdf

12 http://www.hhikz.com/

13 https://www.facebook.com/minenergork/posts/552555094952731

14 https://informburo.kz/novosti/berdybek-saparbaev-prigrozil-otvetstvennostyu-avtoram-peticii-protiv-stroitelstva-zavoda.html

15 http://www.diapazon.kz/kazakhstan/kaz-politics/83565-saparbaev-prigrozil-privlech-k-otvetstvennosti-teh-kto-podpisyvaet-peticiyu-protiv-dobychi-kaliynyh-soley-v-aktobe.html

ArcelorMittal steelworks in Temirtau – one the largest polluters in the country. Level of the air pollution is alarming, as well as the diseases rate in the city. Although Kazakhstan has joined the PRTR Protocol, it still did not ratify it. The citizens do not have access to the exact data, the industry is hiding its real impact, and the state authorities are staying idle. (More info: pages 6, 12).

Photo: Ondrej Petrlik/Arnika

3. Legislative, regulatory and other measures to implement the provisions of article 4 on access to environmental information

The Law of the Republic of Kazakhstan "On access to information»[16], adopted on 16 November 2015, provides a number of the following measures with respect to the provisions of article 4 of the Convention:

In accordance with article 7, paragraph 5, the information user has the right not to justify the need to obtain information.

Paragraph 12 of Article 11 provides that the response to a written request is provided at the choice of the user of the information in paper and (or) electronic form in the language of the request.

16 http://adilet.zan.kz/rus/docs/P1500001090

Paragraph 10 of Article 11 specifies that "a reply to a written request shall be provided within fifteen calendar days from the date of receipt to the holder of the information. In cases where the requested information falls within the competence of several information owners and when an answer to a written request requires the receipt of information from other information owners, the time for consideration may be extended only once by the information owner's leader but not more than fifteen calendar days, about which the user Information shall be communicated within three working days from the date of extension of the examination period ".

Article 10 of the Law of the Republic of Kazakhstan "On access to information", in addition to providing information on request, provides for an unlimited number of measures, including:

- placing information in the premises occupied by information owners, and in other places designated for this purpose;
- providing access to meetings of colleges of state bodies in accordance with the legislation of the Republic of Kazakhstan and online broadcasting of open meetings of the Chambers of the Parliament of the Republic of Kazakhstan, including competent local representative bodies of the region, city of republic significance, the capitals and colleges of state bodies held at the end of the year, on Internet resources;
- Hearing and discussion of reports of the heads of central executive bodies (with the exception of the Ministry of Defence of the Republic of Kazakhstan), akims and heads of national higher educational institutions;
- placing information in the media;
- placing information on the Internet resource of the information owner;
- placing information on the relevant components of the e-government web portal;
- other methods not prohibited by the legislation of the Republic of Kazakhstan.

And Article 9 denotes, among the duties of the information owner, the posting on an ongoing basis of open data of information on the Internet portal of open data, not related to information with limited access.

Paragraph 11 of Article 11 states that "a written request received from the holder of information whose competence does not include the provision of the requested information shall be forwarded to the relevant information owner within three days from the date of receipt of the request, with simultaneous notification of the information of the information sent by the request to the user ".

Paragraph 17 of Article 11 clearly states that a refusal to provide information on a written request must be given a reasoned response that is notified to the information user within five working days from the date of registration of the request.

Paragraph 13 of Article 11 of the Law "On Access to Information" specifies: "If the answer to a written request requires copying or printing, the information user is obliged to compensate the information owner for the actual costs of copying or printing."

According the Decree of the Government of the Republic of Kazakhstan of December 31, 2015 № 1176[17], the actual costs of copying or printing and the procedure for paying

17 http://adilet.zan.kz/rus/search/docs/ddt=2015-12-31&dno=1176&fulltext=%D0%9F%D0%BE%D1%81%D1%82%D0%B0%D0%BD%D0%BE%D0%B2%D0%BB%D0%B5%D0%BD%D0%B8%D0%B5%D0%BC+%D0%9F%D1%80%D0%B0%D0%B2%D0%B8%D1%82%D0%B5%D0%BB%D1%8C%D1%81%D1%82%D0%B2%D0%B0+%D0%A0%D0%B5%D1%81%D0%BF%D1%83%D0%B1%D0%BB%D0%B8%D0%BA%D0%B8+%D0%9A%D0%B0%D0%B7%D0%B0%D1%85%D1%81%D1%82%D0%B0%D0%BD+%D0%BE%D1%82+31+%D0%B4%D0%B5%D0%BA%D0%B0%D0%

Oil spills in western Kazakhstan – heavily polluted region feeding the state budget. Governor of Aktobe Region publicly threatened those who signed the petition against mining of potassium salts. Activists and supporters of environment movement are often under pressure, especially when they work in a public institution or organization dependent on public funds. (More info: page 7)

Photo: Martin Plocek/Arnika

them to the owner of information, as well as the procedure for the release of socially vulnerable segments of the population from paying actual costs for copying or printing are established. A certain amount of payment should be considered quite acceptable, it ranges from 0,1 % monthly calculation index for each page of the requested information - in case the requested information is provided in A4 format, up to 5% of the monthly calculation indicators for each page of the requested information - in case the requested information is presented in a format exceeding the format A0.

The Law of RK of April 8, 2016 introduced amendments to the Environmental Code on access to environmental information. In particular, the creation of the State Pollutant Release and Transfer Register (Article 160) is envisaged, the main purpose of which is to ensure the transparency of the activities of users of natural resources, the information content of the State Environmental Information Fund (Article 161) is expanded. Annual preparation and publication of the National Report on the State of the Environment and Use of natural resources of the Republic of Kazakhstan is envisaged.

The standard of the state service "Provision of environmental information", approved by the order of the Minister of Energy of April 23, 2015 № 301[18] and the regulation of

B1%D1%80%D1%8F+2015+%D0%B3%D0%BE%D0%B4%D0%B0+%E2%84%96+1176+

18 http://energo.gov.kz/index.php?id=3612

the state service "Provision of environmental information", approved by the order of the Minister of Energy on May 22, 2015, No. 369. Thus, it can be noted that measures are envisaged for active and passive provision of environmental information.

Effectiveness of measures taken and problems of implementation of the norms of the Convention

Analysing the provisions of the Law of the Republic of Kazakhstan "On Access to Information", it should be noted that it takes into account most of the requirements of Article 4 of the Aarhus Convention, with the exception of such measures as the obligation to provide copies of actual documentation containing or including the requested information; as well as to ensure compliance with the requirement to separate relevant information not to be disclosed, from information related to the environment, for mandatory provision of the latter.

However, for the time being the provisions of the adopted Law of RK "On access to information" in many cases are not properly implemented. The general picture of violations of the "Law on Access to Information" exists not only with respect to environmental information. Data on violations in providing information to journalists were obtained on the basis of a study of "10 simple questions on access to information for journalists", which Internews Kazakhstan conducted among journalists of Kazakhstan. 104 people took part in the survey. Based on their answers, most often (79.61 %), when they receive information, journalists encounter a violation

of the deadline for responding to a request, in the second place - the answer is not on the substance of the questions (67.96 %). Closing these three violations respond only to "convenient" questions (60.19 %). Among other violations, it is worth noting "no response at all" (41.75 %) and unmotivated refusal to process information (20.39 %).

According to the representatives of the EO Green Salvation from the 120 requests sent by the organization in 2014, no answers were received to 29 (about 30 %). It is noted that out of 71 responses received, more than half (60 %) contained inaccurate, incomplete information. In 2016 the EO Green Salvation sent 125 inquiries, 40 of them (about 32 %) were not answered. Of the 85 responses received, more than half (54 %) contained inaccurate, incomplete information.

Within the framework of the project "Enforcing Citizens' Rights and Public Participation in Decision-Making on Environmental Issues - Practical Implementation of Aarhus Convention in Mangystau", in the course of 2015-2016, 53 requests were sent. In 10 cases (almost 20 %) the answers were not provided, and in almost half the cases the information was provided in violation of the deadline. At the same time, NGO representatives note that most of the violations are committed at the local and regional levels of government.

The state service "Provision of environmental information", according to the accepted standard, is implemented only in paper format, which, taking into account the long distances in the country, leads to an extension of the time for obtaining information. The restriction of this form of service contradicts Clause 12 of Article 11 of the Law "On Access to Information": "The answer to a written request is provided by the user's choice of information in paper and (or) electronic forms".

As experts noted during the national round table "Implementation of the Aarhus Convention in Kazakhstan", in Astana on July 15, 2016, a significant obstacle to the im-

plementation of Article 4 is the lack of open access to basic information in the electronic form.

Primary data from many monitoring posts are not available to the public, except for data on background air monitoring placed on the portal www.atmosphera.kz. Often, air quality monitoring is carried out at points remote from the most polluted areas of cities, or only data from posts with a lower level of contamination is displayed in the online mode. Information bulletins on the state of the environment published by the state organization "Kazgidromet" present only generalized data in an aggregated administrative unit in the context of the air pollution index.

There are still many legislative norms that serve as an obstacle to obtaining information affecting the environment. Thus, most of the information characterizing the scale of impact is currently provided by users of natural resources through the statistical reporting system. According to Article 8 of the Law "On State Statistics", primary statistics on emissions, discharges and placed waste of a specific enterprise are not provided to the public.

Part of the information that determines the scope and qualitative composition of future impacts, such as plant capacities, raw materials consumption, can be classified as commercial secret, according to Article 126 of the Civil Code (CC).

Also, part of the project documentation, including environmental impact assessment (hereinafter referred to as EIA), may be subject to copyright or patent law and be regulated by Art. 964 Civil Code, art. 15, 20-22 of the Law "On Informatization".

According to the Law "On Subsoil and Subsoil Use", the terms of subsoil use contracts, including the nature protection part, are closed.

Despite public protests, the authorities withdraw the lands in Kok-Jeilau valley at former capital Almaty from the territory of Ile-Alatau National Park, and permitted construction of oversized ski resort. The case was reviewed by the Aarhus Convention Compliance Committee that confirmed violation of the Convention principles. The construction is anyway going on. (More info: pages 16, 31, 32)

Photo: Mikhail Kaimirassov

4. Legislative, regulatory and other measures to implement the provisions of article 5 on the collection and dissemination of environmental information

According to Article 161 of the EC, the State Environmental Information Fund collects, records and stores environmental information.

The State Environmental Information Fund consists of: natural resource cadastres, pollutant release and transfer register and other environmental information registers, a list of environmentally hazardous industries, environmental monitoring data, EIA materials and State Environmental Review with the consent of the customer of the planned activity, regulatory legal acts and normative-technical documents in the field of environmental protection and use of natural resources, etc.

On December 30, 2015, the Ministry of Investment and Development adopted Order No. 1274 "On Approval of the Rules for the Use of Networks of Telecom Operators in order to provide a single duty and dispatching service" 112 "with services for ... sending short text messages to cellular telephones in case of threat or occurrence and removal threats of emergency situations, of social, natural and man-made nature ... ".

The national report on the state of the environment and the use of natural resources for 2011-2014 and the draft report for 2015 are posted on the official website of the Ministry of Energy of the Republic of Kazakhstan and on the website www.ecodoklad.kz.

In accordance with the "Rules for maintaining the State Pollutant Release and Transfer Register" approved by Order No. 241 of the Minister of Energy of the Republic of Kazakhstan of June 10, 2016, all enterprises of the first category of danger will be required to provide the following information annually from 1 April 2017 for public access:

1) name, legal address, type of activity of the nature user;
2) electronic version of the issued environmental permit;
3) information on the volume of actual emissions to the environment;
4) electronic version of the program of industrial environmental control and reports of environmental monitoring, an action plan for environmental protection;
5) the results of state environmental control;
6) information on mandatory payments to the budget for emissions to the environment, including over-set standards.

According to Article 282 of the EC, users of natural resources are obliged to inform customers about food products and feeds obtained from GMOs through labelling. EC does not establish the level (in percentage terms) of the content of GMOs in products and obliges to label all products containing or consisting of or obtained from GMOs without exception.

In accordance with Article 6 of the Law of the Republic of Kazakhstan "On Access to Information", access to information on food safety is not subject to restriction of access.

The Protocol on PRTR has not yet been ratified.

Effectiveness of measures taken and problems of implementation of the norms of the Convention

Information on the state of the environment in the Republic of Kazakhstan is available without any request for information on the website of the National Aarhus Centre[19].

It is in the form of short 6-7 page documents for the entire territory of the country (for the period from 2014 to 2016 data are presented monthly).

There are also bulletins on the state of the environment (from 2005 to 2016, presented monthly, in recent years, also supplemented by semi-annual and annual bulletins). The documents give characteristics at the level of air and water pollution indexes, as well as cases of exceeding the maximum permissible concentrations for certain types of air pollution in the context of regions and cities, and the "List of main polluting components in surface waters" is presented.

The National Report on the state of the environment in the Republic of Kazakhstan provides the same general information.

19 http://aarhus.kz/ru

The above information can provide an overview of the state of the environment, and serve as a basis for developing common policies, but cannot in any way be the basis for effective public participation in decision-making processes for projects of the proposed activity.

More detailed information on the types of impacts is presented in the reports placed on a pilot basis on the Internet resource of the National Aarhus Centre, which are still provided on a voluntary basis by large enterprises-users of natural resources. In 2013, 6 enterprises were represented, in 2014 - 40 large users of natural resources for 137 production facilities, in 2015 - 40 large users of natural resources for 2010 production facilities.

More detailed information on the state of soils, air, and water is not provided either on a centralized site or on regional sites and is not available to the public.

As experts noted during the national round table "Implementation of the Aarhus Convention in Kazakhstan," in Astana on July 15, 2016, the most significant obstacles to the implementation of Article 5 are:

1. The disparity between environmental information on various state bodies and the lack of a system for exchanging this information.
2. It should also be noted the low efficiency of filling the registers of environmental information provided for the conduct of regulatory documents. So an available variant of an important source of information considered in the preparation of the report – the EIA registry contains documents only for the period 2003 - 2013. The last update is on July 3, 2015 - more than a year and a half ago!

Missing waste management and illegal dumping of the waste, including hazardous one, represent serious risk to human health. Kazakhstan did not adopt Law on Waste and did not finish inventory of persistent organic pollutants, especially PCBs. Several civic initiatives deal with mapping illegal dumping sites and informing local residents about the risks.

Photo: Majda Slamova/Arnika

5. Legislative, regulatory and other measures to implement the provisions of article 6 on public participation in decision-making on specific activities

Currently, the following legislative and regulatory acts have been adopted and are being implemented to follow the article 6 of the Aarhus Convention in Kazakhstan:

- The rights of individuals and public organizations to participate in the decision-making process by the state authorities on matters relating to the environment are prescribed in the procedure established by the legislation of the Republic of Kazakhstan - the Environmental Code [20] Republic of Kazakhstan in subpar. 4 par. 1 of art. 13 and subpar. 3 par. 1 of art. 14,

20 http://online.zakon.kz/Document/?doc_id=30085593

- Instruction for carrying out environmental impact assessment (EIA) (Order of the Ministry of Environmental Protection of the Republic of Kazakhstan on June 28, 2007 No. 204-p with changes from June 17, 2016 № 253)[21] ;
- Rules for conducting State Environmental Review (Order of the Ministry of Energy of the Republic of Kazakhstan dated February 16, 2015 No. 100. Registered in the Ministry of Justice of the Republic of Kazakhstan on May 12, 2015 No. 11021)[22];
- Rules for holding public hearings (Order No. 135 of the Ministry of Environmental Protection of the Republic of Kazakhstan dated May 7, 2007, as amended on March 26, 2013, No. 50-Ө as amended and supplemented on June 21, 2016 No. 260)[23];
- Rules for access to environmental information related to the EIA procedure and the decision-making process for the planned economic and other activities (Order No. 238-p of the Ministry of Environmental Protection of the Republic of Kazakhstan as of July 25, 2007, as amended on June 21, 2016 No. 258[24]);
- List of economic activities whose projects are subject to be submitted to public hearings (Order of the Minister of Energy of the Republic of Kazakhstan of June 10, 2016 No. 240).[25]

5.1 Notification to the public concerned of the decision-making process at the earliest stage of the process

With regard to article 6, paragraph 2, of the Aarhus Convention concerning notification to the public concerned of the decision-making process at the earliest stage of the process, it can be noted that only the time limits for informing the public about public hearings have been legislated. Paragraph 3 of Article 57-2 of the Environmental Code of the Republic of Kazakhstan defines: "Local executive bodies 20 days before public hearings provide open access to environmental information related to the EIA procedure through an Internet resource, and also using other methods of information". Thus, according to paragraph 10 of the "Rules for conducting public hearings," the customer informs the interested public not later than 20 calendar days before the public hearings are held. In practice, even these terms are violated, and access to documentation is provided later or even after public hearings. A concrete example of such violations is presented in the Communication of a group of citizens to the Aarhus Convention Compliance Committee (ACCC/C/2013/88).[26]

The compulsory publication of announcements on the submission of project materials for state environmental review was cancelled by amendments to the Environmental Code in accordance with the Law of the Republic of Kazakhstan of April 8, 2016 No. 491-V. The Rules of State Environmental Review do not establish requirements for timely and adequate public information at the earliest stage of the process.

21 http://online.zakon.kz/Document/?doc_id=30115016#pos=0;0
22 https://zakon.uchet.kz/rus/docs/V1500011021
23 http://online.zakon.kz/Document/?doc_id=30106343#pos=0;0
24 https://tengrinews.kz/zakon/pravitelstvo_respubliki_kazahstan_premer_ministr_rk/hozyaystvennaya_deyatelnost/id-V070004876_/
25 https://tengrinews.kz/zakon/pravitelstvo_respubliki_kazahstan_premer_ministr_rk/hozyaystvennaya_deyatelnost/id-V1600014058/
26 http://www.unece.org/env/pp/compliance/compliancecommittee/88tablekaz.html.

5.2 Timing of the various stages of the procedures for public participation in decision-making

The following terms for public participation in decision making are defined by the legislation of the Republic of Kazakhstan: In accordance with paragraph 10 of the "Rules for conducting public hearings", "the Customer informs the interested public in the state and Russian languages no later than 20 calendar days before public hearing", in paragraph 12 of the Rules states that local executive bodies 20 days before public hearings provide open access to environmental information related to the procedure EIA.

According to paragraph 13 of the Rules, the interested public submits to the customer comments and proposals (if any) on project documentation on time, no later than 3 working days before the date of public hearings, i.e. the interested public has the opportunity to give comments and suggestions within 16 calendar days.

According to paragraph 10 of Article 11 of the Law of the Republic of Kazakhstan "On access to information"[27] "An answer to a written request is provided within 15 calendar days from the date of receipt to the owner of the information. In cases where the requested information falls within the competence of several information owners and when an answer to a written request requires the receipt of information from other information owners, the review period may be extended only once by the information owner for no more than fifteen calendar days."

In the "Rules for Access to Environmental Information, Related to the EIA Procedure", paragraph 9, the authorized body shall, within 15 calendar days, review comments and proposals and provide a response. In the case where further study is required, the review period may be extended for no more than 30 calendar days, with the applicant's notification within 3 calendar days.

5.3 The ability to participate in the decision-making process at the earliest stage

The Land Code of the Republic of Kazakhstan[28] does not define the right of the public to participate in the selection and reservation of land for economic activities, which does not allow the public to participate in the decision-making process at the earliest stage and to exert any influence on the decision-making primarily about the proper creation of this object, since this issue has already been resolved.

The "Rules for Conducting State Environmental Review" does not include requirements for timely and adequate public participation at the earliest stage of the process.

According to paragraph 51 of the "Instruction for Conducting an EIA," public opinion should be taken into account both at the stage of preparation and at the stage of discussion of the EIA materials. However, there are no clear procedures for such participation.

Excluded by Law No. 491-V of April 8, 2016, Article 57, paragraph 3 of the Environmental Code: "Environmental protection plans developed for Category I and II facilities for obtaining permits for emissions into the environment shall be subject to public hearings" that significantly limited the possibility of public participation in decision-making processes.

27 http://online.zakon.kz/document/?doc_id=39415981
28 http://online.zakon.kz/Document/?doc_id=1040583

5.4 Encourage the exchange of information between applicants and the public

Currently, in the legislation is not envisaged the exchange of environmental information between the public and the applicant, nor does it provide for incentives for users of natural resources to provide environmental information to the public.

Public inquiries sent to the company often remain unanswered or the public receives a reply that the information has been submitted to state bodies.

5.5 The duty of state authorities to ensure access to the public concerned for all information relevant to the decision-making process

Paragraph 3 of Article 57-2 of the Environmental Code of the Republic of Kazakhstan obliges local executive bodies to provide open access to environmental information relating to EIA materials through the Internet resource 20 days before public hearings, and using other methods of informing.

In accordance with the legislation, the customer is obliged to study and agree with the local executive body the most effective ways of informing the public (announcements in the media, information sheets, stands, written appeals). In practice, EIA materials are posted on the websites of the local executive body responsible for conducting public hearings, for 20 calendar days and at the customer's offices.

The period of 20 calendar days provided for by law to discuss the material of the EIA is less than the period of 30 days provided for by the Law on Access to Information of the Republic of Kazakhstan (Article 11, paragraph 10), during which the authorized body is obliged to respond to a public inquiry. However, the request may be required by the public for additional information when studying the EIA materials.

5.6 Procedures for submitting comments

The rules for conducting public hearings have procedures that allow the public to submit their comments and suggestions not only during public hearings, but also in writing, but they are tied only to the procedure for holding public hearings.

Article 57 of the EC RK clause 2 says: "All interested citizens and public associations are given the opportunity to express their opinion during the state environmental review". Paragraph 1 of this article says that "the publicity of state environmental review and public participation in environmental decision-making and the use of natural resources are provided through public hearings." Although the public has the right to initiate a public environmental review legally and to submit comments, but there are no procedural rules for recording the conclusions of the Public Environmental Review in the State Environmental Review[29].

29 http://ecocitizens.kz/newsletters/byulleten-07

5.7 Adequate consideration of the results of public participation in decisions taken

In accordance with paragraph 9 of the "Rules for Conducting State Environmental Review," the materials submitted to the SER should contain the results of taking into account public opinion. The customer submits to the SER protocol of public hearings and the draft EIA, which should be finalized taking into account public opinion. Written comments on environmental impact assessment materials, if they are taken into account, are additional to the protocol of public hearings. The protocol of public hearings has a recommendatory character, and in practice there is complete disregard for even very numerous expressions of public opinion. As can be seen from the example of the decision-making process for the construction of a resort in the Kokzhailau valley in the Almaty vicinity.[30]

The results of public participation are practically not reflected in the final decision, which is the conclusion of the state environmental review. There are examples where, after the participation procedures, the public for a long time could not get an idea of the final decision.[31]

5.8 Informing about the decision taken

The result of the state environmental review is an expert opinion. After making a decision on the expertise of the SER, all interested persons are given the opportunity to obtain information on the object of examination (Article 57 of the Environmental Code of the Republic of Kazakhstan).

According to paragraph 3 of Article 57 of the Environmental Code of the Republic of Kazakhstan, the conclusions of the SER must be published on the Internet resources of local executive bodies within 5 working days.

Disagreements in the implementation of the SER are considered through negotiations or through the courts.

5.9 Public participation in cases where the conditions of activity are revised or changed

In accordance with paragraph 17 of the "Rules for Conducting the SER", with a negative conclusion of the SER with the conclusion "not agreed", the expert initiator finalizes the materials on the comments of the state environmental review and submits them for a second state environmental review or refuses the proposed activity.

Measures to ensure public participation at the final stage of legislation are not provided.

30 http://esgrs.org/?tag=%D0%BA%D0%BE%D0%BA-%D0%B6%D0%B0%D0%B9%D0%BB%D1%8F%D1%83
31 http://pavon.kz/page/netzavodu

Effectiveness of the measures taken and problems of implementation of the norms of the convention

In RK, according to Article 6 of the Law of the Republic of Kazakhstan "On Non-Profit Organizations" of January 16, 2001, NGOs are created in the following forms: institutions, public associations, associations, foundations. Article 14 of the EC and a number of other articles that define the rights of the public describe the rights of public associations, which are political parties, trade unions and **other citizens' associations** created on a voluntary basis to achieve common goals that are not contrary to the law. Thus, NGOs created in other forms do not have this right.

Due to the fact that the SER rules do not stipulate the requirement to take public opinion into account at the EIA preparation stage and there are no clear procedures for informing the public, the public does not have the opportunity to exercise its right to participate in the preparation of the EIA.

Article 57 of the EC RK clause 2 says: "All interested citizens and public associations are given the opportunity to express their opinion during the state environmental review". Although the public has the right to initiate the Public Environmental Review (PER) legally and to submit their findings to the bodies responsible for conducting the SER, but because of the lack of procedural rules for recording the conclusion of the PER in the SER procedure, the PER is an ineffective tool for public participation. In addition, in order to carry out public environmental review in accordance with the requirements of the Environmental Code, registration of an application for conducting an PER is required, which must be considered within 10 working days from the date of submission of the application for conducting the PER. While the period of the State Environmental Review should not exceed two months for Category I facilities, one month for Category II facilities, ten working days for facilities III and IV. Therefore, it can be concluded that for objects of categories III and IV there is a high probability that the SER will end before the registration of the application for conducting the PER is registered, and in accordance with Article 65 of the EC RK, the registration of the application for the PER may be refused in the event that the "The state environmental review of the proposed public environmental impact assessment facility is completed."

Excluded by the Law of April 8, 2016 No. 491-V, paragraph 1, article 57 of the Environmental Code "Publicity of SER and access to decision-making" that the application for SER is subject to mandatory publication in the media, which significantly worsened the opportunities for the public to receive information about the beginning of the SER procedure.

As noted above, the number of 20 calendar days provided for public participation does not meet the requirement of reasonable timing, so the public should be able to analyse the information, have time to obtain additional information from government agencies and time to get acquainted with the information, time to prepare for participation in the hearing or for the preparation of comments and the time for effective participation in these processes.

A period of 20 calendar days excluding public holidays for the preparation and effective participation of the public in the decision-making process reduces opportunities for effective public participation.

The deadline for obtaining additional information on the EIA according to the legislation may be from 15 to 30 days, in this regard, a period of 20 days does not provide the

public with the opportunity to analyse information, obtain additional information from government bodies and does not provide time to get acquainted with the information, the time to prepare for participation in the hearing or for the preparation of comments and the time for effective participation in these processes.

The Land Code does not include the right of the public to be informed when choosing and reserving a land plot for economic activities, which does not allow the public to participate in the decision-making process at the earliest stage of the process.

The "Rules for the conduct of the SER" do not fix the requirements for timely and adequate public information at the earliest stage of the process and on the commencement of the decision-making procedure.

Currently, the legislation does not provide for the exchange of information between the public and the applicant, nor does it provide for incentives for users of natural resources to provide information to the public.

Public inquiries sent to the company, in most cases, remain unanswered or the public receives a response that the information is provided to state authorities.

Before conducting public hearings, EIA materials are posted on the websites of the local executive body responsible for conducting public hearings and at the customer's offices. This practice does not allow interested people living in rural areas to study EIA materials, since many, especially housewives, elderly people and people with disabilities, do not know how to use the Internet and do not have any opportunity to come to a city where customer´s offices are placed.

The system of state environmental monitoring does not meet modern requirements, therefore, information received at the request of the public may be incomplete and biased, which reduces the ability of the public to participate effectively in the decision-making process.

In addition, the public does not receive information about a real account of the public opinion when making a decision.

The public has no information and legislative provisions to participate in the finalization of the material on the comments of the SER.

6. Measures taken to ensure public participation in the preparation of plans and programs related to the environment, in accordance with the provisions of Article 7

Paragraphs 8 and 9 of Article 13 and paragraphs 9, 10 of Article 14 of the Environmental Code of the Republic of Kazakhstan grant the right to individuals and public associations to participate in the discussion of draft normative legal acts, to submit their comments and participate in the process of preparing plans and programs related to the environment.

In paragraph 62 of the Decree of the President of the Republic of Kazakhstan of June 18, 2009 No. 827 "On the System of State Planning in the Republic Kazakhstan[32] is said: "The participants in the processes of the State Planning System are state authorities, legal entities with state participation, representatives of public, scientific and private organizations, individuals."

Articles 5 and 6 of the Law of the Republic of Kazakhstan "On Public Councils" give the right to members of the Public Councils to participate, give comments and suggestions in the preparation of plans and programs. State bodies are obliged to take into account the comments and proposals of the Public Council.

Articles 5 and 6 of the Law of the Republic of Kazakhstan "On Public Councils»[33] give the right to members of the Public Councils to participate, give comments and suggestions when preparing plans and programs. State bodies are obliged to take into account the comments and proposals of the Public Council.

The rules for the placement and public discussion of draft concepts of draft laws and draft normative legal acts on the Internet portal of open regulatory legal acts approved by the order of the Minister of Information and Communications No. 22 of June 30, 2016 determined the procedure for ensuring access to projects of strategies, programmes, plans and their public discussion. However, in this case, public discussion is limited to the possibilities of online discussion by citizens registered on the e-government web portal. At the same time, the minimum period for discussion is determined in ten working days, and comments and proposals received after the end of the period for public discussion of projects established by the state agency-developer are not considered.

Effectiveness of measures taken and problems of implementation of the norms of the Convention

There are no procedural rules in the legislation that allow the public to receive timely information, to participate in the discussion and development of state policy related to the environment. The norms for providing comments and proposals by the public, as well as procedures for taking into account public opinion, have not been developed.

32 http://online.zakon.kz/Document/?doc_id=30431770#pos=0;0
33 https://online.zakon.kz/Document/?doc_id=36800092

EU financed project implemented by non-governmental organizations revealed serious impact of environmental pollution on foodstuff in 2017 – as an indicator, daily consumed camel milk was selected. State-run monitoring of the environment is insufficient and local residents are often not aware of the risks of living close to contaminated sites.

Photo: Majda Slamova/Arnika

There are no procedural rules in the legislation that regulate the timing of notification to the public, providing enough time for preparation and effective participation in the development of plans, programs and policies by the state related to the environment; The norms for the provision of comments and proposals by the public, as well as the procedures for taking public opinion into account, have not been developed.

The list of public organizations that can participate in the development of the policy has not been drawn up, and therefore information about the beginning of the discussion process and materials is practically not provided for public discussion.

Public councils, basically, were created formally, and often due to Public Councils, wide public participation in the development of environmental policy is excluded.

There is practically no possibility for the public to participate in the development of the state policy on the environment.

7. Measures taken to promote public participation in the preparation of regulatory acts and norms that may have a significant impact on the environment, in accordance with the provisions of Article 8

Paragraph 3 of Article 18 of the Law of the Republic of Kazakhstan "On Regulatory Legal Acts"[34] enables state bodies to involve representatives of public associations in drafting laws, regulatory legal decrees of the President of the Republic of Kazakhstan, regulatory legal acts of the Government of the Republic of Kazakhstan and draft regulatory legal acts of other authorized bodies.

Article 20 of the Law of the Republic of Kazakhstan "On Regulatory Legal Acts", state bodies through public councils can receive public proposals when legal acts are being prepared. Comments must be submitted within 10 days.

The rules for the placement and public discussion of draft concepts of draft laws and draft regulatory legal acts on the Internet portal of open regulatory legal acts approved by the order of the Minister of Information and Communications No. 22 of June 30, 2016 determine the procedure for ensuring access to draft laws and by-laws and their public discussion. However, in this case, public discussion is limited to the possibilities of online discussion by citizens registered on the e-government web portal. According to these rules, drafts of regulatory acts are available on the portal of "electronic government". At the same time, the minimum time for discussion is ten working days and comments and proposals received after the end of the period for public discussion of projects established by the government agency are not considered.

The effectiveness of taken measures and the problems of implementation of the norms of the Convention

The period of 10 calendar days, excluding holidays and days off, for preparation and effective public participation in the discussion of regulatory acts is not sufficient.

There are no legislative norms for taking public opinion into account and for receiving feedback from the state body.

Due to the fact that there are a very limited number of representatives of non-governmental organizations among members of Public Councils, the possibility of public discussion of draft regulatory acts is lowered.

Articles 18 and 20 of the Law of the Republic of Kazakhstan "On Regulatory Legal Acts" provide for the right of the public to participate in the preparation of regulatory legal acts, but state bodies arbitrarily restrict this right, citing the fact that only accredited associations can participate in the discussion of the regulatory legal acts.

The public has limited opportunities in practice to participate in the preparation of regulations in comparison with associations of business entities, as a result of which a number of amendments have recently been adopted that have worsened the opportunities for the public.

34 https://online.zakon.kz/Document/?doc_id=37312788

Talgar – UNESCO protected cultural heritage on the Great Silk Road. Despite public protests, the state authorities started construction of the new road to the ski resorts just next to the fortress in 2016, ministry of culture and the court stand by. Southern part of archaeological site was completely destroyed. (More info: page 31)

Photo: Green Salvation

A sad example of public participation is the discussion of the draft "Rules for conducting public hearings" by the Ministry of Energy of the Republic of Kazakhstan, which was sent to a limited number of non-governmental organizations, and the time given to provide comments, notes and suggestions was only one day! This way the public was unable to study, analyse and make comments and recommendations. Moreover, the state body conducting the process of discussion did not respond to the extent to which the proposals submitted by the public, even in such a short time, were taken into account. The public was not invited to further discussion of some other versions of the document. At the same time, representatives of the business, represented by their accredited associations, were able to discuss and make suggestions constantly in various versions of the document. As a result, the norms important to the public contained in the previous Rules were excluded, and compliance with the provisions of the Aarhus Convention was deteriorated.

8. Legislative, regulatory and other measures for implementation of the provisions of Article 9 on access to justice

8.1 The right to judicial protection

The right of citizens to judicial protection is enshrined in Paragraph 2 of Article 13 of the Constitution of the Republic of Kazakhstan: "Everyone shall be guaranteed judicial protection of his rights and freedoms"[35].

Implementation of such rights is based on the provisions of the Civil Procedure Code and through sectorial legislative acts. In particular, a number of articles of the Environmental Code of the Republic of Kazakhstan envisage the rights and obligations of individuals and public associations, the procedure for appealing against refusal to provide, the provision of incomplete and unreliable environmental information in court:

"Article 13. Rights and obligations of individuals in the field of environmental protection[36]

11) To demand the cancellation of decisions on the placement, construction, reconstruction and commissioning of enterprises, constructions and other environmentally hazardous facilities in administrative or judicial order, as well as to limit and stop economic and other activities of individuals and legal entities that have a negative impact on the environment and human health;

12) To bring an action to court for damages caused to their life and health and property as a result of violation of legislation of the Republic of Kazakhstan."

"Article 14. Rights and obligations of public associations in the field of environmental protection

1-1) To apply to the court in defence of the rights, freedoms and legitimate interests of individuals and legal entities, including the interests of an undefined circle of persons, on environmental protection and the use of natural resources [changes introduced to the Environmental Code in 2016 only];

11) To raise questions on bringing individuals and (or) legal entities to justice, to bring suits in court for compensation for damage caused to health and (or) property of citizens as a result of violation of the environmental legislation of the Republic of Kazakhstan;

12) To demand the cancellation of decisions on the placement, construction, reconstruction and commissioning of enterprises, constructions and other environmentally hazardous facilities in administrative or judicial order, as well as to make a decision to restrict, suspend and terminate economic and other activities of individuals and legal entities that have a negative impact on the environment and human health."

"Article 51. The conclusion of the State Environmental Review

7. Cancellation of the conclusion of the State Environmental Review is carried out in a judicial procedure."

However, Chapter 21 of the Environmental Code of the Republic of Kazakhstan "Environmental Information"[37] does not mention the possibility of judicial appeal against

35 http://online.zakon.kz/Document/?doc_id=1005029#pos=142;-137
36 http://adilet.zan.kz/rus/docs/K070000212_
37 http://adilet.zan.kz/rus/docs/K070000212_

access to environmental information, that is, the Environmental Code does not envisage such procedure directly.

The possibility of judicial appeal against refusal to provide environmental information, provision of incomplete environmental information, etc. was enshrined in the Environmental Code from 2007 in Article 167, Paragraph 4: "Refusal to provide environmental information, failure to provide, provision of incomplete or inaccurate environmental information, as well as the unlawful referring of publicly available environmental information to information with limited accessibility can be appealed to a higher state body and (or) an official or to a court." But on November 16, 2015, by Law No. 404-V of the Republic of Kazakhstan, the article was excluded from the Environmental Code. Despite the adoption of the Law of the Republic of Kazakhstan on Access to Information, the exclusion of Article 167 from the Environmental Code creates certain difficulties for the public appealing to the courts.

Article 6 of the Law of the Republic of Kazakhstan "On Access to Information"[38] states that information on the state of the environment refers to information that is not subject to restriction. Accordingly, this information should be provided in all cases and the failure to provide this information is unlawful.

Article 7. "Rights and obligations of the user of information" of the Law of the Republic of Kazakhstan "On access to information" entitles users of information to demand, in accordance with the procedure established by law, compensation for material damage and moral harm caused to them by violation of their right to access to information.

According to paragraph 1 of Article 18 of this law, "Unlawful restriction of the right to access to information may be appealed to a higher state body (a higher-ranking official) or to a court". Paragraph 2 of the same article says that a missed deadline for appeal is not the basis for the public body or official or court to refuse to accept the complaint. The reasons for missing the deadline are clarified during the consideration of the complaint on the merits and can be one of the grounds for refusing to satisfy the complaint.

Article 20 of the Law "On Access to Information" establishes liability for violation of the Republic of Kazakhstan legislation on access to information in accordance with the legislation of Kazakhstan. In particular, Article 456-1. The Code of Administrative Offenses provides for liability for unlawful restriction of the right to access to information.

The procedure for appealing against failure to provide access to environmental information in court is determined by Chapter 29 of the Civil Procedure Code[39].

According to Paragraph 18 of the regulatory decision of the Supreme Court of the Republic of Kazakhstan of November 25, 2016 No. 8 "On certain issues of application by the courts of the environmental legislation of the Republic of Kazakhstan in civil cases", public authorities, by the request of the public for the provision of environmental information, must provide it, taking into account the requirements of Chapter 21 of the Environmental Code of the Republic of Kazakhstan, Law of RK as of November 16, 2015 No. 401-V "On Access to Information" and Article 4 of the Aarhus Convention.

According to Paragraph 19 of the above mentioned regulatory decision, when considering this category of cases, courts must keep in mind that the provisions of the Aarhus Convention are applicable to disputes on access of members of the public about the violation of their right to access to environmental information.

Thus, it can be concluded that at the legislative level it is enshrined that the citizens and legal entities have right to appeal in court against actions (inactivity) of the

38 http://adilet.zan.kz/rus/docs/Z1500000401
39 http://adilet.zan.kz/rus/docs/K1500000377

state body, local government, public associations, organizations, officials, public servant for failure to provide environmental information or the provision of incomplete and unreliable information (including non-compliance with procedural requirements, such as timing, reasons for refusal, etc.). In addition, citizens and legal entities can challenge such actions in administrative procedure, i.e. by a higher authority, but not an independent authority.

It is also important to note that these reforms followed the general context of public policy, and were not measures to ensure access to justice on environmental issues.

However, it is important to note that, in practice, these provisions are not always implemented, as evidenced by the experience of the EO "Green Salvation".[40]

8.2 Access to a fast procedure that does not require or requires a minimum payment, for re-examination carried out by a statutory authority or an independent and impartial non-court authority regarding access to environmental information

The proceedings in cases on challenging decisions and actions (inaction) of state authorities, local government, public associations, organizations, officials and public servants are rendered in Subsection 3 "Special Production", Chapter 29. The Civil Procedure Code of the Republic of Kazakhstan of October 31, 2015 № 377-V.

Article 295 of the Civil Procedure Code of the Republic of Kazakhstan determines the procedure for preparing the case for the trial of the Civil Procedure Code of the Republic of Kazakhstan:" In accordance with the procedure provided for in Article 165 of this Code, the judge prepares the case for trial within ten working days from the date of application to the court proceedings. Extension of this period is not allowed."

Terms of consideration of the case are provided by Article 296 of the Civil Procedural Code of the Republic of Kazakhstan. The application shall be reviewed by the court within one month from the day of the completion of the preparation of the case for trial with the participation of the prosecutor, the citizen, the representative of the legal entity, the head of the state body, the local government body, the public association, the organization, the official or public servant, of which the decisions and actions (inactivity) or their representatives are being challenged.

The application of the prosecutor is considered by the court within ten days from the day of the completion of the preparation of the case for the trial with the participation of the prosecutor and with the participation of the body, the official who made the decision to reject the protest, or his representative.

The procedure for payment and the amount of the state fee, as well as the grounds for exemption from its payment, are determined in accordance with the Code of the Republic of Kazakhstan "On Taxes and Other Mandatory Payments to the Budget" of December 10, 2008 No. 99-IV.[41]

Rates of state duty in courts for 2017 - 1 monthly calculation index – 2,269 tenge (approximately 6 euros).

"Article 535. 1. From the applications submitted to the court, applications for special proceedings, applications (complaints) in cases of special proceedings, applications for

40 http://esgrs.org/?page_id=5497

41 http://sud.gov.kz/rus/content/gosudarstvennaya-poshlina

the issuance of a court order, applications for the issuance of a duplicate of the writ of execution, applications for the issuance of writ of execution for the enforcement of arbitral awards, arbitral tribunals and foreign courts, applications for repeated issuance of copies of judicial acts, writ of execution and other documents, the state fee is charged in the following amounts:

2) From complaints on unlawful actions of state bodies and their officials, infringing upon the rights of individuals, 30 percent;

3) From complaints about unlawful actions of state bodies and their officials, infringing upon the rights of legal entities - 500 percent"

Procedural law (the Civil Procedure Code of the Republic of Kazakhstan) provided opportunity for the public to appeal against court decisions on appeal, cassation and supervisory review. Judicial decisions are made in writing, with access to the public. Court costs are reimbursed by the losing party of the litigation. At the same time, the state fee for claims of non-property nature remains rather low and accessible to everyone. The state fee when reviewing judicial acts is regulated by clause 1-1 of Article 535 of the Tax Code of the Republic of Kazakhstan:" In case of a request for review of judicial acts in cassation procedure for determinations, decisions and decisions of courts on disputes of non-property and property nature, the state fee is charged at a rate of 50 percent of the corresponding rate of state duty established in clause 1 of this Article when filing a statement of claim on such disputes". At the stage of enforcement of judicial decisions by the enforcement authorities there is also a possibility of enforcing an executive document determined by the court.

In addition to the judicial procedure, it is possible to apply to the Commissioner for Human Rights (Ombudsman), which does not require the payment of a state fee. However, this is not an alternative to judicial review, since the ombudsman's decisions are recommendatory in their nature[42]. Thus, the procedure before the court is not fast and not expensive, but at the same time in Kazakhstan there is no extrajudicial procedure for dealing with cases of not providing access to environmental information by an independent body.

8.3 Binding force of the decisions

Binding force of the decisions made by the court is provided by clause 1 of Article 14 of the Constitution of the Republic of Kazakhstan: "Everyone is equal before the law and the court"[43].

Paragraph 2 of Article 297 of the Civil Procedure Code of the Republic of Kazakhstan[44] "The court's decision and its implementation," states: The decision of the court is sent to eliminate the violations of the law to the head of the state body, local government, public association, organization, official, civil servant or higher authority in the order of subordination within three working days after the court decision enters into legal force. A copy of the court decision is sent to the higher state body and the prosecutor."

The execution of the decision shall be notified to the court, citizen or legal entity not later than within a month from the date of receipt of the court decision. For failure

42 http://www.ombudsman.kz/about/zakon.php
43 http://online.zakon.kz/Document/?doc_id=1005029
44 http://adilet.zan.kz/rus/docs/K1500000377

to comply with a court decision, the responsible officials are liable as provided by law.

Compensation for harm caused to a citizen or legal entity as a result of an illegal decision, the commission of illegal actions (inaction) by a state body, a local government body, a public association, an organization, an official or a public servant is carried out in the procedure of litigation."

8.4 Opportunities for members of the public

On April 8, 2016, the Environmental Code of the Republic of Kazakhstan amended some of the rights and obligations of public associations in the field of environmental protection[45]. According to Paragraph 1-1 of Article 14 of this law, public associations, when carrying out their activities in the field of environmental protection, have the right to apply to the court in defence of the rights, freedoms and legitimate interests of individuals and legal entities, including in the interests of an indefinite circle of persons regarding environment and the use of natural resources. Pursuant to the provisions of this article of the Environment Code, the courts of the Republic of Kazakhstan accept to their proceedings claims (statements) of environmental public associations on the protection of the rights of an undefined circle of persons on matters related to the environment.

The environmental organization Green Salvation notes that it took almost 10 years to include a new Subparagraph 1-1) into Article 14, Paragraph 1, based on the Aarhus Convention![46] Despite the late introduction of this provision in the Environmental Code, the public, including the EO Green Salvation, pursuant to paragraph 2 of Article 9 of the Aarhus Convention and paragraph 2 of Article 8 of the Republic of Kazakhstan Code of Civil Procedure applied to the courts in defence of the interests of an indefinite number of persons and the state.

The law of April 25, 2016 No. 505-V ZRK directly amended Article 57 (1) of the Environmental Code, directly providing for the right to appeal against the conclusion of the state environmental review. Prior to the adoption of this legislative amendment, many courts considered that the conclusion of a state environmental review was a decision that could be appealed in court, accordingly, members of the public did not have effective access to justice under article 9, paragraph 2, of the Aarhus Convention on Access to Justice with respect to violations of their rights for public participation under Article 6 of the Aarhus Convention. However, so far there is no statistical information on how this legislative amendment has improved the public's access to justice in violation of their rights to public participation.

Thus, public associations are endowed with procedural legal capacity.

The public can go to court on the basis of Paragraph 2 of Article 9 of the Aarhus Convention, Paragraph 2 of Article 8 of the Code of Civil Procedure of Kazakhstan, including the protection of interests of an indefinite number of persons and the state. In the regulatory decision of the Supreme Court of the Republic of Kazakhstan of November 25, 2016 No. 8 "On some issues of implementation by the courts of the environmental legislation of the Republic of Kazakhstan in civil cases" the following clarification is given. Paragraph 15: "The plaintiffs in cases involving compensation for damage caused to the

45 http://online.zakon.kz/Document/?doc_id=39364423
46 http://esgrs.org/?p=15079

environment, as well as the restriction, suspension and termination of economic and other activities of individuals or legal entities and individual entrepreneurs without a legal entity, that has a negative impact on the environment, human life and health, **can act ... physical and (or) legal entities, individual entrepreneurs without a legal entity** ..." and public associations. In addition, Article 2 of the Law of the Republic of Kazakhstan "On Public Associations" states that "public associations in the Republic of Kazakhstan are recognized political parties, trade unions and **other associations of citizens**, created on a voluntary basis to achieve their common goals that are not contrary to the law," regardless of their organizational form.

8.5 Access to administrative or judicial procedures to challenge the acts or inactivity of individuals and public authorities that violate provisions of national legislation related to the environment

There are no special bodies, including courts, to challenge the actions or inactivity of state bodies or officials on the issues of the environment. According to Paragraph 1 of Article 292 of the Civil Procedural Code of the Republic of Kazakhstan, citizens and legal entities have the right to challenge in court the decisions, actions (inactivity) of state bodies, local government bodies, organizations, officials, public servants, etc. The decision of the state body and the official can be cancelled by a higher state body or official. The procedure for appeals is regulated by the Law "On the Procedure for Consideration of Appeals from Individuals and Legal Entities" dated January 12, 2007 No. 221[47].

On issues of protection of rights, citizens can also apply to the Ombudsman or to the prosecutor's office.

At the legislative level, access to judicial procedures exists, but in practice, appeals against actions (inactivity) of officials are quite rare. It is also important to note that statistics on the categories of such cases could not be found on the Supreme Court website.

Measures taken to ensure that the procedures referred to in Paragraphs 1, 2 and 3 provided adequate and effective legal remedies.

In Kazakhstan, at the legislative level, there are opportunities for judicial prohibition of the activities subjected to complaint while reviewing the complaint by the public. These issues are regulated by Chapter 15 of the Civil Procedural Code of the Republic of Kazakhstan. In particular, according to Paragraph 1 of Article 155 of the Civil Procedural Code of the Republic of Kazakhstan, upon application of persons participating in the case of arbitration proceedings, the court may take measures to secure a claim in any situation. The securing of a claim is allowed in any state of affairs, if the failure to take such measures can make it difficult or impossible to enforce a court decision.

According to Paragraph 1 of Article 156 of the Civil Procedure Code of the Republic of Kazakhstan, measures to secure a claim may be: 1) seizure of property; 2) prohibiting the defendant from taking certain actions; 3) prohibiting other persons from transferring

47 http://adilet.zan.kz/rus/docs/Z070000221_

the defendant's property to the defendant or performing obligations with respect to him; 4) suspension of the sale of property in the case of a claim to release the property from seizure and (or) property of the debtor to challenge the results of the assessment of the property; 5) the suspension of the contested act of the state body, organization or official (except, specified cases), and others.

In case of violation of the prohibitions specified in this article, the guilty persons shall bear administrative responsibility. In addition, the prosecutor has the right to claim through a court of law a compensation for damages caused by failure to comply with the definition of secured claims.

Court decisions are available to the public through the website http://sud.gov.kz. Court records are provided to the parties upon request.

8.6 Providing public information on access to administrative and judicial review procedures

There are practically no effective measures to inform the public about access to administrative and judicial review procedures. On the official websites of courts are placed samples of statements of claim, information about which judge examines this category of cases, etc. Also, effective measures are not taken to explain to the population their environmental rights, that is, citizens do not understand in all cases that their environmental rights were violated[48]. Information is mainly published on public internet resources that are not popular with the public, and not everyone has access to them (lack of internet access or computer literacy). In addition to the fact that the very procedure of judicial review is rather complicated (the need to prepare claims and their justification, the presentation of evidence in court, the knowledge of procedural terms, etc.), violations of environmental legislation are difficult to prove (data that the public cannot have are necessary, the lack of clear environmental standards, the lack of regular independent control of emissions).Thus, it can be concluded that information on access to administrative and judicial review procedures is inadequate.

The effectiveness of taken measures and the problems of implementation of the provisions of the Convention

The right to judicial protection, proclaimed by the Constitution, must be supported by a system of mechanisms that allows it to be put into practice. Despite the statutory guarantees, many of them do not have enforcement mechanisms. As already mentioned in one of the examples above, even a court decision does not guarantee its implementation in practice, which indicates the inadequacy of existing mechanisms to guarantee the right to judicial protection.

The level of public confidence in the judicial system is not yet fully explored category. In most cases it refers to the confidence in the courts, but many expressed a high level of corruption and lack of qualifications of judges, especially on environmental issues. Thus, the President of Kazakhstan, Nursultan Nazarbayev, stated in 2016: "Despite the positive international ratings and external prosperity indicators of administration of justice, there is one key question - the lack of public confidence in the courts and law enforcement agencies. This is evidenced by the complaints of citizens in the higher state

48 http://sud.gov.kz/rus/content/orhusskaya-konvenciya-perechen-prirodoohrannyh-konvenciy

authorities up to the President, which contain complaints about the decisions of the courts, law enforcement, and sometimes also expressed doubts about the integrity and incorruptibility of the judiciary and law enforcement agencies. "He cited figures: "Last year alone, the Administration of the President received about 6,000 complaints from citizens and organizations and on the legality of the law enforcement in 10 months of this year - 7,000 complaints".

In addition, many non-governmental organizations dealing with environmental issues point out that judges, when making their decisions, are often guided not by the text of the Aarhus Convention, but by national legislation, which contradicts this very legislation.

The lack of access to free qualified legal aid in practice is a serious problem. Not every citizen can independently formulate a statement of claim (or statement) and defend their rights, freedoms and legitimate interests at court. Qualified legal assistance is guaranteed by Paragraph 1 of Article 13 of the Constitution. However, it is often inaccessible to citizens.

For example, many rural residents were left without a lawyer. Poor citizens, both in villages and cities, are often forced to waive the services of a professional and rely on their relatives and friends for protection. It is cheaper, but it does not give confidence in obtaining correct and timely legal assistance. This became an obstacle that a citizen faces when addressing to judicial protection.

Court proceedings are often so complex, time-consuming and expensive that private individuals, especially those who are in economically unfavourable position, have difficulties in exercising their rights. The legal community believes that an effective system of legal advice and qualified assistance can make a significant contribution to eliminating such obstacles and it is necessary to create an impeccable mechanism for access to justice, and it needs to be developed in the context of not only purely legal problems but also social policy.

Environmental statistics could not be found for the years 2014 - 2016 in cases of appeals against decisions of environmental violations and environmental rights. Therefore, it was not possible to track the dynamics and number of calls compared to other categories of cases. This suggests that if this statistics is on the website of the Supreme Court, it is not available due to the difficult search.

Also, the issue of state fee is problematic to a certain extent.

Therefore, the fee for individuals in the form of the state fee is acceptable and for legal entities as well. However, if a non-governmental organization sues somebody for defence of its rights and the cost of the fee is KZT 1,134,500 (roughly 3,000 euro), this is an enormous amount for NGOs, since as a non-profit organization, they do not receive revenues.

Kazakhstan's efforts to ensure access to justice have been repeatedly recognized by the Compliance Committee of the Aarhus Convention and the meetings of the Parties to the Convention inadequate (decisions II/5a - 2005, III/6c - 2008, IV/9c - 2011, V/9i - 2014):

Decision V/9i on Kazakhstan's compliance with the Convention, adopted at the Fifth Session of the Meeting of the Parties to the Aarhus Convention states that the Meeting of the Parties:

(Paragraph 2) "Encourages the corresponding Party to continue with implementation of the measures contained in its 2013 study on access to justice and to report them in its national implementation reports".

8.7 Access to Justice in Environmental Matters[49]

The practice of appealing to the courts for the purpose of appealing against acts or inactivity of state bodies and officials reveals numerous shortcomings in the work of authorized state bodies, courts, prosecutors, departments responsible for implementation of judicial decisions.

Submission of applications

Numerous violations of the procedural law are committed by the judicial authorities at the stage of submitting applications to the court. In most cases, courts do not accept applications the first time. The wording of the refusals and the reasons for the return of applications have significantly changed compared to 2010-2014. If earlier the right of the public to appeal to the court was often challenged, and there were constant disputes over the definition of jurisdiction, then in 2015-2016 other procedural obstacles were often used:

- failure to pay the state fee, despite the fact that appeals to the court were carried out in defence of the rights of local residents and an indefinite number of persons;
- it is not to be considered and resolved in civil proceedings;
- the material in question "does not invoke the legal consequences against the applicant."

To obtain acceptance of applications and consideration of cases in principle, the EO will appeal the refusals of the courts of first instance in higher courts, including the Supreme Court. As a result, the process of applying to a court, instead of five days, is often stretched on for many months.

Analysis of judicial decisions made by the courts

When making decisions, the courts do not take into account international environmental conventions ratified by the Republic of Kazakhstan, to which the plaintiffs refer to in the statements of claim. In doing so, courts ignore the provisions of Article 4, Paragraph 3, of the Constitution, Article 2, Paragraph 3 of the Civil Procedure Code of the Republic of Kazakhstan, Article 2, Paragraph 2 of the Environmental Code, Article 1, Paragraph 3 of the Forest Code, Article 2, Paragraph 4 of the Law "On Specially Protected Natural Territories" and other regulatory legal acts. These articles refer to the priority of ratified international treaties before the laws of Kazakhstan and their immediate implementation.

For example, on March 11, 2016, the Specialized Interdistrict Economic Court of Almaty (hereinafter referred to as "SIEC") (decision number 00-2-500/16) refused to satisfy the claim of the EO. The documents submitted to the court confirming the arguments for prohibiting the demolition and sanitary cutting of plants listed in the Red Book of Kazakhstan were not investigated by the court and they were not properly assessed.

The court, when considering this case on the merits and in making a decision on the case, did not take into account the norms of the Convention on Biological Diversity. It is not even mentioned in the decision that Kazakhstan, in accordance with the Convention, has accepted international obligations for the conservation of biological diversity,

49 Based on the materials of the judicial practice of the Environmental Organization "Green Salvation" (hereinafter referred to as "EO") 2014 - 2016.

including the protection of plants listed in the Red Book. The judge ignored the fact that, according to national legislation and the Convention, not only the plants themselves should be protected, but also the territory on which they grow. The judge violated the principle of legality (Article 6, Paragraph 1 of the Civil Procedure Code), which states: "The court, when reviewing and resolving civil cases, must strictly observe the requirements of the Constitution of the Republic of Kazakhstan, the constitutional laws of the Republic of Kazakhstan, this Code, other regulatory legal acts under the **application of international treaties** of the Republic of Kazakhstan."

The judge also violated the requirement of Paragraph 10 of the regulatory resolution of the Supreme Court of the Republic of Kazakhstan of 10 July 2008 No. 1 "On the application of the norms of international treaties of the Republic of Kazakhstan", which states that "... **improper application of norms of international treaties by the court** of the Republic of Kazakhstan **may constitute grounds for cancellation or changes in the judicial act.** Incorrect application of the norm of the international treaty can be caused by the fact that **the courts did not apply the norms of international treaties to be applied or applied the norms of international treaties** that shall not be applied or when the courts did not interpret the norms of international treaties correctly."

Similar violations are also made by the judges of the Supreme Court. For example, on June 27, 2016, the Civil Division of the Supreme Court preliminarily examined the petition of the EO. It concerned the inactivity of the Ministry of Culture and Sports, which did not take the measures necessary for the protection of World Heritage - Talgar city. The board dismissed the application and did not even mention the Convention of the World Cultural and Natural Heritage.

Courts arbitrarily interpret and apply laws in the implementation of legal proceedings. For example, when considering the case of building a road to the ski complex "Kokzhailau", the judge recognized that the "Rules for the Maintenance and Protection of Green Plantations in Almaty" apply to lands of a specially protected natural area of national importance. He "justified" his decision by the fact that the site of the Ile-Alatau National Park, where the planned construction, was located within the administrative boundaries of the city. Almaty City Court's Board of Appeals came to the same conclusion. The courts gave an arbitrary interpretation of 55 points of the said Rules, which indicated that their action does not apply to specially protected natural areas of national importance. In addition, the judges allowed an arbitrary interpretation of Paragraph 6 of Article 108 of the Land Code. The latter states that "the inclusion of land in the city, settlement or village does not entail the termination of the right of ownership or land use rights to these areas."

Courts apply ineffective regulatory legal acts. Courts are very uncritical of the evidence provided by state bodies, which allows the latter to deliberately mislead the courts.

For example, in 2016, the EO sent an application on the recognition of illegal materials of inventory and forest pathological examination of green plantations prepared in violation of the law. While working on these materials, the respondent used a regulatory legal act that has no legal force in the territory of the national park, and an instruction that is not a regulatory legal act of the Republic of Kazakhstan. These documents also appeared in two other cases, which were considered on applications of the EO. These so-called "legal grounds" did not induce the slightest objection neither in case of a judge, nor the prosecutors.

Another example shows how the courts are not critical to the evidence provided by the public authorities. On July 24, 2015 SIEC of Astana considered the application of the EO for the provision of false information about the construction of the cable car to the National Park by the Committee of Forestry and Wildlife (Decision No. 02-8141-15). The judge, in violation of Article 72 and Paragraph 2 of Article 224 of the Civil Procedure Code, did not consider the evidence referred to by the EO. He justified the refusal by referring to the obsolete documents of 1994, which lost power more than 20 years ago in connection with the founding of the Ile-Alatau National Park (Government Resolution dated February 22, 1996 № 228).

Judges of the Supreme Court admit the same violations as judges of lower courts. Judges often duplicate the decisions of the courts of first instance, without analysing their content and without verifying their lawfulness and justification.

For example, on June 27, 2016, a judge of the Supreme Court, after having preliminarily reviewed the petition of the EO (case number 3d-5901-16) on the application for recognition of the conclusion of the State Environmental Review on the materials of the Environmental Impact Assessment of the project "Construction of the road to the ski resort "Kokzhailau" as illegal and its cancellation, refused to transfer it to the appeal court of the Supreme Court.

The judge investigated case materials poorly. He did not even understand that it was a planned demolition of the Red Book plants, and not about the logging. In the decree he wrote: "Clear-cutting of the vegetation was carried out by the "Ile-Alatau State National Natural Park " on the basis of the received permits". Although the documents submitted to the court repeatedly indicated that no one has issued a permit for cutting the Red Book plants.

On November 14, 2016, when the application for the recognition of the illegal materials for the inventory and forest pathological examination of green plantations and their cancellation was preliminarily considered, the Supreme Court judge repeated the reasoning of the SIEC of Almaty. He stated that "the contested material does not invoke the legal consequences against the applicant" (case number 3r-10191-16). In the application, the EO clearly substantiated its arguments, relying upon the provisions of Article 2, Paragraph 5, Article 9, Paragraphs 2 and 3, of the Aarhus Convention. As a result, a clearly illegal document became the legal basis for making an important decision by the state bodies.

The practice of a preliminary review by the Supreme Court clearly demonstrated its unreasonableness. The outcome of the case depends on the competence of one judge (Article 443 of the Civil Procedure Code of the Republic of Kazakhstan), which, in practice, is an obstacle to a fair and impartial legal proceedings.

Over the years 2014-2016 as a result of a preliminary review by the Supreme Court of the Republic of Kazakhstan, eight EO's applications for review of judicial decisions in cassation which were based on the Aarhus Convention, the Convention on Biological Diversity, the World Heritage Convention were rejected. By the same action the judges of the Supreme Court violated regulatory decrees No. 1 of July 10, 2008, "On the Application of the Norms of International Treaties of the Republic of Kazakhstan", No. 1 of January 15, 2016 "On the Right of Access to Justice and Competences of the Supreme Court of the Republic of Kazakhstan for Review of Judicial Acts", № 8 of November 25, 2016 "On some issues of application by the courts of the environmental legislation of the Republic of Kazakhstan in civil cases"

Implementation of the courts' decisions and resolutions

In accordance with Paragraph 2 of Article 21 of the Civil Procedure Code "legally enacted judicial acts ... are binding on all state bodies, local government bodies, legal entities, officials, citizens and are subject to execution throughout the territory of the Republic of Kazakhstan".

Practice shows that judicial acts that have entered into legal force are not always fulfilled, and often they are not performed by state bodies and officials. It is necessary to make considerable efforts to achieve fulfilment even of the Supreme Court decrees.

For example, for the fourth year, the resolution of the Supervisory Board for Civil Cases of the Supreme Court of 27 November 2013 has not been implemented. It was made at the request of the public about the inaction of the head of the Department of Sanitary and Epidemiological Surveillance in the city of Almaty.

He did not ensure control over the designation of sanitary protection zones with special signs on the ground.

On October 3, 2014, in connection with the failure to comply with this decision, the plaintiffs filed an application on the inaction of the judicial executor of the Department for the Execution of Judicial Acts of Almaty. During the trial the representative of the Department acknowledged the violations committed by them. On December 24, 2014, a decision was made to resume the enforcement proceedings. However, during the year 2015, the resolution was not implemented. On May 16, 2016, the bailiff issued the ruling again to terminate the enforcement proceedings.

In this regard, on August 3, 2016, on the application of the plaintiffs, the supervisory board of the Supreme Court issued a new ruling. It states that the control over the designation of sanitary protection zones is managed by the head of the Department "as an official - the head of a legal entity". Based on the Supreme Court's decision of August 3, 2016, the enforcement proceedings started again.

Legal consequences of illegal decisions and resolutions of courts

Illegal decisions and decisions of courts of all instances lead to the legalization of activities that:

- Contradicts international treaties and national legislation;
- Paves the way for new more serious violations of human rights to a favourable environment;
- Contributes to the growth of social tension and a decrease in environmental safety;
- The growth of corruption;
- Hinders the development of environmental democracy;
- Undermines trust in state bodies and negatively affects the country's international reputation.

For example, in 2016, when examining in court the statement of the EO about the inactivity of the Ministry of Culture and Sports, which did not ensure the protection of the World Heritage site, it became clear that state bodies did not even try to stop construction by judicial methods. This led to the destruction of the southern part of the ancient settlement. The question of the status of the land on which it is located has

never been clarified. For the destruction of such monument criminal liability is incurred, but neither the authorized bodies nor the prosecutor's office are going to prosecute the perpetrators. In connection with the rejection of the previous project additional budget will be needed for the design and construction of a new highway bypassing the town.

In general, the practice of the Ecological Society "Green Salvation" shows that the courts do not provide the public with full access to justice in accordance with Article 9 of the Convention. This, in turn, does not allow the public to effectively protect human rights to a favourable environment.

Thus, not only the norms of national legislation are violated, but also the requirements of Article 3, Paragraph 8, of the Aarhus Convention and Article 26 of the International Covenant on Civil and Political Rights. Courts create obstacles for the public to fulfil the obligation to protect the environment provided for in Subparagraph 1 of Paragraph 2 of Article 14 of the Environmental Code and Article 38 of the Constitution of the Republic of Kazakhstan.

In connection with the above mentioned it is necessary to organize regular trainings of judges on the application of the rules of international conventions by the courts.

Since 2007, in the section "International Cooperation" a page has been opened on the website of the Supreme Court: "Implementation of the provisions of the Aarhus Convention", which contains: regulatory legal acts on environmental issues; Reports of the meeting of the Parties AC; Manuals on the application of AC; Statistical information on the consideration by courts of claims related to environmental protection and other materials useful to judges and the public[50].However, the materials on this page are not structured, many of them are outdated. Also, actual statistics on the cases considered related to the application of the norms of the Aarhus Convention were not found on the site.

50 http://sud.gov.kz/rus/content/orhusskaya-konvenciya-perechen-prirodoohrannyh-konvenciy

9. Legislative, regulatory and other measures to implement the provisions of Article 6-bis and annex I-bis on genetically modified organisms

The legislation of the Republic of Kazakhstan does not provide for measures that stipulate the need for public participation in decision-making processes on the handling of GMOs.

According to Article 282 of the Ecological Code of the Republic of Kazakhstan, which defines the procedure for the implementation of genetic engineering activities in the course of operations for the production and use of genetically modified products and organisms, only the requirements for notifications and information are made, but it is completely unclear how the decision-making process for handling GMOs, especially in terms of their release into the environment.

GMO-containing objects are not included in the classification of objects of environmental impact assessment, specified in article 40 of the Environmental Code of the Republic of Kazakhstan or in the number of objects of the state ecological examination, referred to in Article 47.

Thus, it is impossible to apply the mechanisms provided for public participation in the Environmental Impact Assessment procedure and the State Environmental Review.

10. Follow-up measures in connection with the issues of compliance

It is necessary to restore a separate ministry responsible for the development of environmental policy and effective implementation of the international obligations of the Republic of Kazakhstan on environmental conventions.

Currently, with the adoption of the Law on Access to Information, there are more specific possibilities to expand access to environmental information.

Public authorities and the public need to monitor the implementation of the legislation, which can serve as a basis for a real improvement in access to information both to open data and on request.

At the same time, it is necessary to ensure the high-quality implementation of the legislation on cadastre and, in general, the State Environmental Information Fund, to ensure their availability to the public and, in particular, the information collected in the State Pollutant Release and Transfer Register.

It is necessary to provide easy access to information on decision-making processes affecting the environment on the websites of local executive state bodies - akimats.

Effective implementation of the processes of public participation in decision-making on sites of importance to the public needs to be ensured.

It is necessary to develop Rules for conducting public environmental control and methodological recommendations on procedural standards for conducting public environmental review and public environmental control.

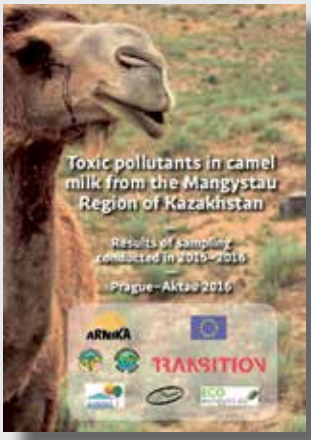
An effective mechanism for taking public opinion into account should be developed in decisions affecting the environment, including projects for activities, as well as plans, programs and regulations.

It is necessary to develop decision-making procedures for GMOs containing objects, including public participation.

To improve the delivery of information on the environmental rights of the population, experience should be used to promote the rights of entrepreneurs and anti-corruption legislation.

It is necessary to resume the practice of training judges, collect and analyse the jurisprudence conducted by the Supreme Court earlier, to ensure public access to the results of this analysis.

Other available publications



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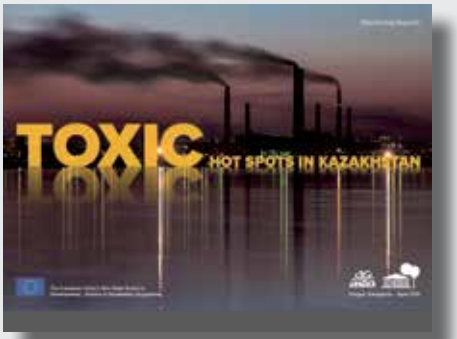

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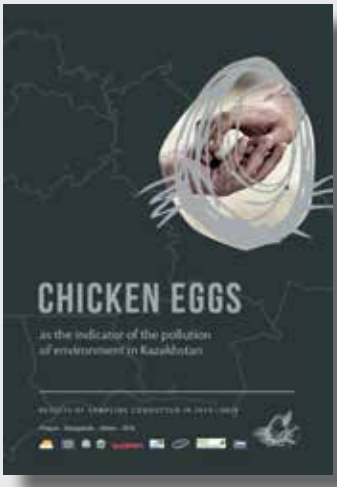

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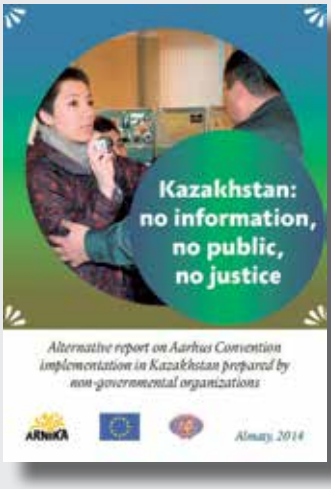

About us

Enforcing citizens' rights in Kazakhstan

In 2014 – 2017, EU-financed project "Enforcing citizens' rights and public participation in decision making on environmental issues – practical implementation of Aarhus Convention in Mangystau" has been implemented by non-governmental organizations Arnika from the Czech Republic, and its partners from Kazakhstan: Regional Ecological Museum of Karaganda Region and Centre for Implementation of New Environmentally Safe Technologies, with the support of Eco Mangystau, ECOM (Pavlodar) and Green Salvation (Almaty). The project was supporting the local communities in dealing with local environmental issues, created number of informational tools, promoted dialogue between the state and the civil society, and established independent monitoring of access to environmental information and public participation in decision making.

More information in Russian: http://ecocitizens.kz

Arnika – Citizens Support Centre (Czech Republic)

Established in 2001, non-governmental organization Arnika has many years of experience promoting information openness, supporting public participation in decision-making, and enforcing environmental justice. Its experts assist various civil society organizations, municipalities, and individuals in solving cases related to environmental pollution and its prevention throughout the Czech Republic. Arnika also participates in international projects focused on environmental protection and strengthening the implementation of the Aarhus Convention in Central and Eastern Europe, Caucasus, and Central Asia. Arnika is a member of the Green Circle – an association of ecological non-governmental organizations of the Czech Republic, European Environmental Bureau, and European ECO Forum.

Contact
Arnika
Delnicka 13
170 00 Prague 7
The Czech Republic
Tel./fax: +420 222 781 471
e-mail: cepo@arnika.org

More information: http://arnika.org/en

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