

PUBLIC ACCESS TO ENVIRONMENTAL INFORMATION IN KAZAKHSTAN.

Using the example of the activity of the Ecological Society Green Salvation

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Legal Grounds for Access to Environmental Information

The right of citizens to access environmental information is enshrined in national legislation: the Constitution, the Environmental Code, the law “About Access to Information,” and other normative legal acts (hereinafter —NLA). And also, this right is stipulated by international treaties, for example, the Aarhus Convention.

Article 20 of the Constitution reads: “Everyone has a right to freely receive and disseminate information by any means not prohibited by law. The list of information constituting the state secrets of the Republic of Kazakhstan is determined by law.”¹

In accordance with the Article 159 of the Environmental Code, “environmental information includes information and data on:

- 1) condition of the environment and its objects;
- 2) factors affecting the environment, including its pollution;
- 3) program, administrative, and other measures that have or may have an impact on the environment;
- 4) environmental standards and environmental requirements for economic and other activities;
- 5) measures that are being planned and implemented for protection of the environment and their financing;
- 6) activities that have or may have an impact on the environment, decision-making process and the results of environmental inspections, including the accounted calculations, analyses, and other information relating to the environment;
- 7) impact of the condition of the environment on health, safety, and living conditions of the population, cultural objects, buildings and structures.”²

Article 163 of the Environmental Code states that “environmental information is publicly accessible,” “access to certain information and data that constitutes publicly accessible environmental information is carried out by providing it at the request of individuals and legal entities, dissemination in the media and special publications, publishing on the Internet, as well as with the use of other publicly available information and communication tools.”

In accordance with the Articles 13 and 14 of the Environmental Code, individuals and public associations have a right to receive timely, complete, and reliable environmental information from state bodies and organizations.

The procedure for access to information is defined by the law “About the Process of Reviewing Appeals from Natural and Legal Persons” of 2007. The Article 8 specifies the time frame for consideration of appeals: “An appeal from a natural and (or) legal person, which does not require obtaining information from other persons, officials, or an on-site inspection, is reviewed within fifteen calendar days.”

The law “About Access to Information”³ was adopted in 2015. The Article 6 of the law states that access to environmental information and information about sanitary and epidemiological situation **is not limited**.

Access to information in Kazakhstan is also regulated by the laws “About State Services,” “About Mass Media,” “About Informatization,” and others.

Internet Resources

It should be noted that more and more Internet resources with environmental information are becoming available. In the recent years, almost all normative legal acts of Kazakhstan can be found on the Internet:

- Information and legal system of normative legal acts “Adilet” (<http://adilet.zan.kz/rus>);
- Internet portal of openly accessible NLA “Electronic Government” (<https://legalacts.egov.kz/>);
- Internet portals of ministries, departments, akimats and other state bodies.

Starting from 2016, draft NLAs are published on the Internet portal “Electronic Government” for public discussion, including discussions online (<https://legalacts.egov.kz/application/list/1/1301/1>).

The public got more opportunities to send requests. The requests can still be sent by mail or delivered to the office. Another method is to post “an electronic appeal” to blog platforms of leaders of state bodies, through the web portal “Electronic Government” (<https://egov.kz>).

Many state bodies have set up their pages in social networks—Facebook, Instagram.

Written requests take the longest time, but are still the most reliable way to obtain environmental information. Written replies are documents that can be presented even in court, in the event of disputes or conflict situations. However, one must take into account that information is often incomplete and low-quality.

Subjects of Requests

The main subjects of the requests of the Ecological Society Green Salvation (hereinafter—ES) are related to:

- environmental conditions in populated areas (air, water, soil, and vegetation);
- health and environmental safety of people;
- impact of industrial enterprises on the environment;
- condition of specially protected natural territories;
- implementation of projects, including those directly affecting specially protected natural territories;
- clarification of environmental legislation;
- violations of environmental legislation;
- actions of state bodies in solving certain environmental problems;
- public participation in the decision-making process on issues relating to the environment, etc.

In accordance with the Aarhus Convention, all this information must be accessible!

Statistics of Requests for Environmental Information

On an average, the organization sends over a hundred requests to state bodies annually. The table below presents data on the number of requests of the Ecological Society Green Salvation and responses to them for the last 4 years.

Year	Number of requests	Received replies	Did not receive replies	Number of replies containing low-quality incomplete information
2013	136	99	37	71
%	100	73	27	72
2014	189	126	63	75
%	100	67	33	60
2015	252	166	86	80
%	100	66	34	48
2016	125	85	40	46
%	100	68	32	54

By analysing the answers to our organization's requests for 2 years (2015 and 2016), we can name organizations that most often do not respond to public inquiries. The first place belongs to the Republican State Enterprise "Kazhydromet," and the second and third places were divided by "guardians of

order”—the Specialized Environmental Prosecutor’s Office of Almaty and the Department of Internal Affairs of Almaty.

No.	State bodies filed with requests (subjects of requests)	% of requests of the ES which were not answered
1	“Kazhydromet” (requests about quality of environment in the city of Almaty)	80
2	Specialized Environmental Prosecutor’s Office of Almaty (environmental violations)	80
3	Department of Internal Affairs of Almaty (environmental violations)	58
4	Ile-Alatau State National Natural Park (conditions of ecosystems of the national park and legal violations on its territory)	49
5	Committee for Environmental Regulation, Control, and State Inspection in the Oil and Gas Sector of the Ministry of Energy (environmental legislation)	33
6	Forestry and Wildlife Committee of the Ministry of Agriculture (about activity of national parks)	26
7	Akimat of the City of Almaty (environmental situation in the city)	25

On a separate note, it should be mentioned that deputies of the Senate and Majilis of the Parliament and Maslikhat of Almaty often do not respond to our requests. Generally, representatives of private business, both small and large, ignore public inquiries. Article 164 of the Environmental Code obliges not only public authorities, but also other organizations to provide environmental information.

Another problem is poor access to full and timely information on the environmental situation in populated areas of Kazakhstan. The geographical portal of “Kazgidromet” stations for atmospheric quality control, where operational information is to be published, does not always work correctly (<http://atmosfera.kz/>). Data from most points in some cities where observations are being conducted, including Astana, are absent.

In cases when state officials refused to provide information or did not respond to the letters at all, Green Salvation was forced to appeal to a court.

For more information on judicial practice of the organization, see the material “Access to Justice in Environmental Matters,” published in this Herald, page 45.

Conclusions

Based on the experience of Green Salvation, the following conclusions can be made.

1. Sometimes, state officials interpret provisions of the national legislation at their own will, for example, the term “confidential information.”

2. Internet resources of state bodies do not always have enough information to make decisions, so the public has to prepare a large number of requests.

3. Responses of state authorities often do not contain exhaustive information, which forces the public to send additional requests.

4. Appeals to courts sometimes allow obtaining information, but there is no guarantee that the information is complete and of a good quality. Additional time needed to appeal to courts delays the process of obtaining information, which hinders prompt decision-making and makes the work of the organization more difficult.

In 2015, after an official visit to Kazakhstan, the UN special rapporteur on human rights, Baskut Tunchak, concluded that there is a need to improve access to information in the country, which is still relevant: “Information is fundamental to guarantee numerous human rights, and a foundation for any regime to manage hazardous substances and wastes. It is necessary to enable free, active and meaningful public participation; to understand the severity of impacts on human rights by hazardous substances; and to realize the right to an effective remedy. In my view, in Kazakhstan there appears to be a systematic and wide-spread deficiency in: (1) generating information on pollution in the environment that threatens human rights, in particular the right to health; and (2) enabling public access to information in a manner that allows people to defend their rights.”⁴

1 Constitution of the Republic of Kazakhstan, <http://adilet.zan.kz/rus/docs/K950001000>.

2 Environmental Code of the Republic of Kazakhstan, <http://adilet.zan.kz/rus/docs/K070000212>.

3 Law of the Republic of Kazakhstan “About Access to Information” dated on November 16, 2015, No.401-V ЗPK, <http://adilet.zan.kz/rus/docs/Z1500000401>.

4 UN Special Rapporteur on Human Rights & Toxics. End of Visit Statement—Kazakhstan 2015, <http://www.srtoxics.org/2015/03/end-of-visit-statement-kazakhstan-26-march-8-april-2015>.