


**GREEN SALVATION**

**For the Fifth Meeting  
of the Parties to the Aarhus Convention**



**2014 HERALD 2014**





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**GREEN SALVATION HERALD**  
**2014**

# **For the Fifth Meeting of the Parties to the Aarhus Convention**

**The English supplement to the Bulletin  
of the Ecological Society Green Salvation**

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Editors: **Sergey Kuratov, Nataliya Medvedeva**

Translator: **Sofya Tairova**

Designer: **Elena Panyukova**

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## From the Editors

*“The question we face before the new century is how long can we go on talking about “rights” without simultaneously focusing on the individuals “obligations”... The time is right for a “universal declaration of human obligations.” The fact of the matter is that it is meaningless to talk about rights without corresponding focus on each separate government and individual’s obligations?”*

*Jostein Gaarder*

Starting from 2005, the Ecological Society Green Salvation publishes materials devoted to compliance with the Aarhus Convention in the Republic of Kazakhstan. The previous digest to the Forth Meeting of the Parties was issued in 2011. Three years after the Meeting of the Parties, social and ecological situation in the Republic of Kazakhstan got noticeably worse. This is seen from the materials published by the state officials, independent researchers, and international organizations. Main factors which determine the situation in the country can be identified as: lack of a clear environmental policy; economic growth based on increase of extraction of natural resources; increase of dependency of the economy on extraction industries; weakening of legislation in favor of polluters; limitation of public access to impartial environmental information, decision-making process, and justice in the matters related to the environment, corruption.

For the Fifth Meeting of the Parties of the Aarhus Convention, we publish the new issue which begins with a brief review of social and ecological situation in the country. This material prepared based on researches made by international organizations, national statistics, and work experience of the Ecological Society Green Salvation, gives an overview of the conditions facing the public when claiming compliance with the provisions of the Aarhus Convention.

State officials try to brighten up the real situation, and this is clearly seen on the example of the National Report of the Republic of Kazakhstan about compliance with the Convention. Critical review of this document is presented in the next material of the digest. In spite of the report’s abundance of information about round tables, conferences, seminars, it is obvious that the authors have only very general idea about application of the Convention in practice.

This conclusion can be made based on, first of all, legal proceedings of the Ecological Society Green Salvation. Their brief review roughly introduces readers with the deficiencies of the system of justice and obstacles facing the public when trying to access justice on matters related to the environment.

Secondly, a bright example of “practical ignoring” of the requirements of the Convention is how state officials treat opinion of the public who started a campaign “Protect Kok-Jailau!” aiming to defend Ile-Alatau National Park. Two final articles of the digest tell the history of the campaign and describe consequences which can be caused by construction of a mountain ski resort on the territory of the national park.

Editorial staff of the herald hopes that it attracts attention of international organizations, scientists, and wide public to the difficult situation around compliance with the Convention in our country.



## **The Ecological Society Green Salvation**

The Ecological Society Green Salvation was founded in 1990 and is registered as a public organization of the city of Almaty. Green Salvation's goal is to protect the human right to a healthy and productive life in harmony with nature, and to foster improvements to the socio-ecological situation in the Republic of Kazakhstan.

### **Main areas of Green Salvation's activities include:**

#### **1. Defending the human right to a favorable environment**

The organization defends rights utilizing pre-judicial and judicial methods, seeking strict observance of national legislation and international agreements. On average, Green Salvation files eight lawsuits per year and conducts more the 150 legal consultations.

In 2004, 2007, 2013 (with representatives of the public) it became necessary for Green Salvation to appeal to the Aarhus Convention's Compliance Committee. In the case of two of the appeals, the Committee acknowledged noncompliance with individual Convention statutes by the Republic of Kazakhstan and violations of citizens' rights to participate in decision-making processes and to access to justice with regard to environmental concerns.

#### **2. Participation in the development of environmental protection legislation**

Green Salvation participated in the official discussions concerning the Law "On Protection of the Natural Environment in the Kazakh Soviet Socialist Republic" (1991) and the laws of the Republic of Kazakhstan "On Environmental Protection" (1997), "On Environmental Assessment" (1997), "On Specially Protected Natural Territories" (1997), "On Land" (2001), "On Tourist Activities in the Republic of Kazakhstan" (2001), the Forestry Code (2003), the Land Code (2003), Environmental Code (2007) and others. In 2002, at the request of the Committee for Environmental and Nature Management Issues of the Lower House of Parliament, Green Salvation conducted a public environmental assessment of the draft Forestry Code (2003).

#### **3. Environmental awareness and education**

Since 1995, the organization has published the "Green Salvation" Herald, with a supplement in English, since 2000. The Bulletin's thematic issues are related to environmental protection legislation and the protection of human

rights, environmental education, the development of a network of national parks, and other socio-ecological problems. Special courses are developed and textbooks are published for students. To date, more than 30 publications have been produced in Russian, Kazakh and English.

Green Salvation collaborates with the domestic and foreign press, participates in television and radio programs, and organizes exhibitions.

In 2013 more than 250 materials and articles highlighting activities of Green Salvation or written using materials from Green Salvation were published in mass media.

In 2002, Green Salvation began a video program. The films include: “Legacy of the Nuclear Age” (2002), “The Riches of Nature – In Whose Hands?” (2003), “Passengers in Forgotten Way Stations” (2003), “Canyon” and “The Earth Does Not Belong to Man...” (2005), “Behind a window” (2007), “Let us protect Kok-Jailau” (2013), “How we defended national parks” (2014). Several of these films have been awarded prizes at international festivals.

In 2007, Green Salvation began the video discussion club “Green Lens”. In 2002, Green Salvation launched a website in Russian and English.

#### **4. Environmental actions**

Green Salvation actively participated in the anti-nuclear campaign conducted by public organizations opposing a plan to import and bury radioactive waste from other countries in the Republic of Kazakhstan. Green Salvation also participated in the following international campaigns: International Right to Know, Publish What You Pay, and Caspian Revenue Watch.

Green Salvation actively participates in actions to protect the integrity of the environmental system of protected natural territories. Green Salvation is collaborating with administrations of the Ile-Alatau State National Nature Park and the “Altyn-Emel” Nature Park. Video monitoring is regularly conducted on the park’s territory.

In March 2009, Green Salvation launched the successful campaign against construction of high voltage electrical power lines on the territories of the national parks “Altyn-Emel” and Charyn.

Green Salvation actively monitors projects financed by development banks and the activities of transnational corporations that have an impact on the environment.

From 2011 the Green Salvation supports of the public campaign “Protect Kok-Jailau!” initiated against construction of a mountain ski resort on the territory of the Ile-Alatau State National Natural Park.

**The Ecological Society Green Salvation is ready to collaborate on efforts within aforementioned areas.**

## Social and Ecological Situation in Kazakhstan: Facts and Numbers

*...They were exhausted under a burden of their happiness.*

*M.E. Saltykov-Shchedrin,*

*“The story of one city”*

During the period after the Forth Meeting of the Parties of the Aarhus Convention, social and ecological situation in the country continued to get worse. Materials published by the state officials, independent researchers, and international organizations serve an evidence to this. The main trends which define the social and ecological situation in the country are:

- economic growth based on increase of extraction of natural resources;
- increase of dependency of the economy of the country on raw material sectors;
- deteriorating condition of water resources;
- increasing pollution of soil and atmosphere;
- growth of sickness rate caused by environmental pollution;
- continuing deterioration of the state environmental protection system;
- weakening of legislation in favor of polluters;
- failure to follow obligations of the international and national legislation by the state authorities of all levels;
- high level of corruption;
- limitation of public access to the national natural resources;
- restriction of public access to environmental information, decision-making process, and justice in the matters related to the environment;
- massive violations of human rights on favorable environment.

In Kazakhstan, there is a full spectrum of problems typical for under-developed countries.

Lack of environmental policy in Kazakhstan leads to a constant replacement of priorities in the sphere of environmental protection and natural resources utilization. This causes squandering of the state money, deterioration of the natural environment, and lowering of the quality of life.

On May 30, 2013, a Decree of the President established a concept of Kazakhstan’s transition to “green economy.” At the present time, the state officials make active attempts to demonstrate seriousness of their

intentions.<sup>1</sup> But this concept contradicts many provisions of the national and international legislations. Moreover, it allows ministries and departments to develop plans of construction of atomic power stations,<sup>2</sup> implement production of genetically modified organisms,<sup>3</sup> destroy ecological systems of national parks and clear cut specially valuable forestlands.<sup>4</sup>

### **Economic growth based on increase of extraction of natural resources, and increase of dependency of the economy on raw material sectors**

After proclaiming independence in 1991, Kazakhstan declared itself a democratic, secular, lawful, and social state, which highest values are people, their lives, rights and freedoms.<sup>5</sup> But during the period of independence, no truly democratic state was established in the country,<sup>6</sup> and natural resources did not become a basement for economic prosperity of all levels of the society.

In accordance with the official statistics, gross domestic product per capita increases.<sup>7</sup> The growth is primarily based on the extractive industries.<sup>8</sup> “Kazakhstan’s oil sector plays a significant role in the economy and will likely remain a main driver of growth. Kazakhstan possesses the world’s ninth largest proven reserves of oil (3 per cent of the global reserves), and is among the top 20 oil producers. The dependence of the economy on exports of oil and other minerals has been growing, reflecting both higher international prices of oil and higher extraction 12 volumes. Oil and other mineral products account for around 85 per cent of exports, up from around 50 per cent in the mid-

<sup>1</sup> Concept of transitioning of the Republic of Kazakhstan to the “green economy”, adopted by a Decree of the President of the Republic of Kazakhstan dated on May 30, 2013, No.577: <http://www.eco.gov.kz/files/koncepciya.htm>.

<sup>2</sup> Russia and Kazakhstan agreed on construction of an atomic power station in the city of Kurchatov: <http://www.zakon.kz/4628109-rossija-i-kazakhstan-dogovorilis-o.html>; May 29, 2014.

<sup>3</sup> Address of the Head of the State, Nursultan Nazarbayev, to the people of Kazakhstan: [http://www.akorda.kz/ru/page/page\\_215738\\_poslanie-glavy-gosudarstva-nursultana-nazarbaeva-narodu-kazakhstana](http://www.akorda.kz/ru/page/page_215738_poslanie-glavy-gosudarstva-nursultana-nazarbaeva-narodu-kazakhstana); January 17, 2014.

<sup>4</sup> Kazakhstan needs a state forest policy: <http://www.sim.kz/articles/view/31587>; October 2, 2013.

<sup>5</sup> Constitution of the Republic of Kazakhstan. 1995, article 1.

<sup>6</sup> On March 7, 2012, the European Parliament adopted a resolution on situation in Kazakhstan, in which it is stated that “the significant retreats made by the government of Kazakhstan in the recent period in the fields of human rights”, and antidemocratic actions of the public officials are blamed. European Parliament resolution on Kazakhstan (2012/2553(RSP):

<http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=B7-2012-0144&format=XML&language=EN>.

Also, see the Democracy Index of the countries of the world: <http://gtmarket.ru/ratings/democracy-index/info#kazakhstan>.

<sup>7</sup> The World Bank: <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD>.

<sup>8</sup> Majority of investments in Kazakhstan are going into the extracting sector: <http://kzinform.com/ru/news/20140519/36506.html>; May 19, 2014.

1990s. Oil contributes around three quarters of commodity exports. Most of the “non-mineral” exports are in fact accounted for by industries closely linked to natural resources, primarily metals and chemicals...Almost 55 per cent of government revenues came from extraction and exports of oil in 2011.”<sup>9</sup>

State officials admit dependence of the economy from the export of raw materials: “As for today, the economy of Kazakhstan depends on export of raw materials, and therefore, in a significant extent is subjected to influence of external drastic fluctuations of prices on raw materials market.”<sup>10</sup>

“At the same time, other sectors suffer from low productivity, often difficult business environment and insufficient competition in the product markets.”<sup>11</sup> Agricultural sector is also far from being in the best condition.<sup>12</sup>

### **Corruption and shadow economy**

According to the research conducted by Transparency International in 2012, Kazakhstan took the 133<sup>d</sup> place out of 174 countries for the Corruption Perceptions Index. In 2013, the 140<sup>th</sup> place out of 177 countries.<sup>13</sup> Corruption in Kazakhstan has a system nature and takes place in all branches of power.

As stated by the chairman of the Agency on Fighting with Economic and Corruption Crimes, Tussupbekov: “From the beginning of this year, there were 1333 criminal cases initiated against 900 persons who committed corruption crimes, and also officials authorized to perform state functions and persons equaled to them. More than 120 officials of the republic and oblast level were called to account. As for the shadow economy, ... we strengthened fight against illegal trade of alcohol, crude oil, false enterprises. In general, there were 4652 crimes identified...”<sup>14</sup>

“According to the operational data of the Agency of the Republic of Kazakhstan of Statistics, by the end of 2011, unobserved economy made

<sup>9</sup> Strategy for Kazakhstan. European Bank for Reconstruction and Development: <http://www.ebrd.com/downloads/country/strategy/kazakhstan-strategy-2013.pdf>; December 17, 2013, p.11-12.

<sup>10</sup> Concept of transitioning of the Republic of Kazakhstan to the “green economy”, adopted by a Decree of the President of the Republic of Kazakhstan dated on May 30, 2013, No.577, p.4.

<sup>11</sup> Strategy for Kazakhstan...:

<http://www.ebrd.com/downloads/country/strategy/kazakhstan-strategy-2013.pdf>; p.18.

<sup>12</sup> Kazakhstan: 20 years of galloping or duck-size steps?:

[http://kazakh-zerno.kz/index.php?option=com\\_content&task=view&id=48402](http://kazakh-zerno.kz/index.php?option=com_content&task=view&id=48402); November 28, 2011. Agriculture of Kazakhstan – from rain to rain:

[http://www.kazakh-zerno.kz/index.php?option=com\\_content&view=article&id=90440:2014-03-15-04-13-40&catid=18&Itemid=111](http://www.kazakh-zerno.kz/index.php?option=com_content&view=article&id=90440:2014-03-15-04-13-40&catid=18&Itemid=111); March 15, 2014.

<sup>13</sup> Corruption Perceptions Index 2012: <http://cpi.transparency.org/cpi2012/results>. Corruption Perceptions Index 2013: <http://www.transparency.org/cpi2013/results>.

<sup>14</sup> Nazarbayev is unhappy by the rating of corruption perception: <http://news.nur.kz/293401.html>; December 5, 2013.



19.5% of the GDP volume, in the past several years, it fluctuated between 19.5 and 20.1%.” “According to the World Bank, average size of the shadow economy in Kazakhstan for the period of 1999-2007, was 41.1%. According to researches conducted by foreign experts, unobserved economy of developed countries takes 10-15% of the GDP, in the countries with transitional economy – 23-28%, in developing countries – 40-45%.”<sup>15</sup>

Among the main reasons of appearing of shadow economy, the following should be noted: “Lack of responsibility for unjustified planning of the state expenses. The current legislation stipulates responsibility only at the stage of spending of budget money (ill-purposed, non-efficient spending, etc.). But taking out money from the budget into the unobserved economy by overstating costs takes place at earlier stages during the planning phase.

The legislation of the Republic of Kazakhstan lacks of norms about responsibility of the state organs officials, including the leadership, for violation of the requirement of justification stipulated in the Budget Code when preparing republic and local budgets...

Imperfection of the system of law-making and implementation of laws. There are problems of control over implementation of normative and legislative acts.”<sup>16</sup>

### **Loss of biological diversity**

Predominance of the raw materials sector in the economy, incompliance of laws with the requirements of international treaties ratified by the country, their unsatisfactory implementation, and corruption have a destructive impact on the nature of the country. In the Forth National Report of the Republic of Kazakhstan on Progress in Implementation of the Convention on Biological Diversity prepared in 2008 it is said: “The environmental situation in Kazakhstan is characterized by a large extent of degradation of natural systems, leading to destabilization of the biosphere, the loss of its ability to maintain quality of the OS required for the life of society. The problem of desertification is of high importance. The critical state of biodiversity is connected with human activities, environmental pollution and natural disasters, as well as a small area of protected ecosystems. It was the depletion of biodiversity and degradation of 66% of the republic, especially in the area of deserts and steppes, while plowing the land, and overgrazing.”<sup>17</sup>

<sup>15</sup> Complex plan of counteraction to shadow economy in the Republic of Kazakhstan for 2013 – 2015. Adopted by the Decree of the Government of the Republic of Kazakhstan No.190 dated on February 27, 2013: <http://adilet.zan.kz/rus/docs/P1300000190>.

<sup>16</sup> Same as above.

<sup>17</sup> The Fourth National Report of the Republic of Kazakhstan on Progress in Implementation of the Convention on Biological Diversity, 2008: <http://www.cbd.int/doc/world/kz/kz-nr-04-en.pdf>, p.16.

In 2010, in the National Report about condition of the environment in the republic, it is stated: “Failure to act on the sphere of conservation of biodiversity of Kazakhstan threatens to lead to a full extinction of some of species of animals and plants, degradation of ecosystem.”<sup>18</sup>

The National Report name factors impacting the condition of biological diversity – these are “irrational utilization and depletion of natural resources (poaching, over-fishing and over-hunting, uncontrolled recreation activity); degradation of ecosystems and extinction or threatening decline in number of some of the species of flora and fauna, as a result of anthropogenic activity; improper level of ecological culture of the population; conflict on the level of local communities, when issues of providing life necessities for the population conflict with the obligation of environmental protection activity.”<sup>19</sup>

Six years after preparation of the Forth National Report, the situation did not improve. The Fifth National Report of the Republic of Kazakhstan on Biological Diversity of 2014 admits: “With the existing resource-dependent economy and intensive agriculture it is very difficult to regulate pollutants...”<sup>20</sup>

“The contamination of the environment is being intensified and presents a serious problem in general and a very dangerous threat at a local level.”<sup>21</sup>

“Results of ecological zoning in Kazakhstan confirm that the natural environment is not healthy in significant areas of the regions (19.05%). The category of relatively unfavourable areas relates to moderately deserted ecosystems – of a moderate degree of danger (57.82%), since their utilization has already required observance of strict standards and seasonal monitoring of the environment, especially in periods of droughts.”<sup>22</sup>

It should be noted that in the Fifth National Report, it is partially admitted that the legislation stipulates norms contributing to destruction of specially protected natural territories (SPNT) and, at the same time, impeding implementation of the requirements of the Convention on Biological Diversity: “Conservation of biodiversity is highlighted in all tourism development programmes. However, it should be noted that lands in SPTs could be withdrawn for building of touristic sites. This negative motive has appeared since 2008, and the experience has shown that it brings serious risks to the integrity of the SPTs system, especially near large cities with very high land prices.” And further on: “Since July 2013 the reference

<sup>18</sup> National report on environmental conditions in the Republic of Kazakhstan in 2010. – Almaty, 2011, p.115.

<sup>19</sup> National report on environmental conditions..., p.116.

<sup>20</sup> The Fifth national report on progress in implementation of the Convention on biological diversity, 2014, p.10: <http://www.cbd.int/doc/world/kz/kz-nr-05-en.pdf>.

<sup>21</sup> The Fifth national report..., p.9: <http://www.cbd.int/doc/world/kz/kz-nr-05-en.pdf>.

<sup>22</sup> The Fifth national report..., p.41: <http://www.cbd.int/doc/world/kz/kz-nr-05-en.pdf>.

to a “state program” has been replaced with a reference to “documents of the state planning system”, which include a very wide range of documents, both on the national and local levels. This creates preconditions for uncoordinated actions of state agencies, akimats of local authorities and national companies regarding withdrawal of lands in PTs. It starts causing a real threat to the PTs system of the country. Currently the need to make amendments to this article in the law is under discussion.

The example of such threats is procedures, effective since 2013, on withdrawal of 1000 hectares of lands from the Ile-Alatau national park (included into the tentative list of the UNESCO World Heritage) for the construction of a ski resort “Kokzhaylau” under local plans of the Almaty akimat. At the same time, for withdrawal of the lands, the zoning of the Ile-Alatau national park was first changed to move a part of this section from the zone of the “environmental stabilization” to the zone of the “limited economic use”, justifying this decision just with the need to construct the resort. Thus, the imperfect legislation allows similarly to withdraw from any national park virtually almost any site required for privatization. This situation should be changed.”<sup>23</sup>

According to international evaluations, efforts of Kazakhstan in conservation of biodiversity and habitats of live organisms are, obviously, insufficient. By the Environmental Performance Index prepared in 2013 by the University of Yale, Kazakhstan takes the 160<sup>th</sup> place out of 178<sup>24</sup> countries researched.

### **Atmospheric air pollution and climate change**

As indicated above, officials admit that the “problem of environmental pollution is becoming acute and serious, and on a local level, it is very dangerous.”

“Trends for different types of pollutants are quite different. For instance, from 2009 to 2012 the volumes of the following pollutants decreased: crude wastewater discharged into water bodies – by 7.6%, and their share in the total volume of waste waters – by 12.9%; emissions of dust – by 7.1%, lead – by 29.3%, mercury – by 33.3%, arsenic – by 46.2%, dichloroethane – by 67.1%.

During the same four years, from 2009 to 2012, the following indicators increased: emissions of nitrogen oxides – by 20.7%, ammonia – by 29.4%, non-methane volatile organic compounds – by 33%, hydrocarbons – 30.7 %, cadmium – by 168.5%, toluene – by 50.2%, benzopyrene – by 6.9%.

... Pollutants worsen a quality of drinking water, air and make an adverse impact not only on biodiversity, but also on human health.”<sup>25</sup>

<sup>23</sup> The Fifth national report..., p.8, 95, 110: <http://www.cbd.int/doc/world/kz/kz-nr-05-en.pdf>.

<sup>24</sup> 2013 Environmental Performance Index (EPI): <http://epi.yale.edu/epi/issue-ranking/biodiversity-and-habitat>.

<sup>25</sup> The Fifth national report..., p.9-10: <http://www.cbd.int/doc/world/kz/kz-nr-05-en.pdf>.

Problem of atmospheric air pollution in Kazakhstan and, in particular, in Almaty, is discussed for many years. But a lack of environmental policy and quite contradictive economic activity of local officials lead to complication of the situation. As in the beginning of the 2000s, the main sources of the pollution are industrial enterprises and auto-transport. In Almaty, where there are no large industrial enterprises, “up to 90% of the total emissions of contaminants into atmosphere are coming from auto-transport, which quantity has increased in the recent years.” Almaty stays the city with the most polluted atmospheric air in the country. Heavy air pollution also exists in Temirtau, Karaganda, Shymkent, Ust-Kamenogorsk.<sup>26</sup>

“In the area of adaptation to Climate Change, a number of climate change impacts on key sectors of the economy are raising concern. These are increasing water scarcity, reduced agricultural production (driven by heat stress and water scarcity), and extreme heat events in urban and industrial areas, especially in the south.”<sup>27</sup>

### **Deteriorating conditions of water resources**

Problem of deterioration of the condition of water resources during many years is discussed in official documents, researches and reports of international experts. But no effective measures on improvement of the situation were undertaken.

In the report prepared by the UNDP in 2006, it is stated that “over 39% of the country’s population has no permanent access to quality drinking water. The issue is especially acute in rural areas, where slightly over one-third of all rural residents have permanent access to quality drinking water.”<sup>28</sup>

Studies of the last decade indicate accelerating rates of melting of glaciers which are the most important water sources. For example, “According to experts’ evaluation, as a result of degradation of mountain ice caps, flow rate of rivers of the northern slopes of Zailiisky Alatau will reduce approximately on 16%. Regulating influence of glaciation of the river basins on total flow rate variations from year to year caused by asynchronism of the glacier runoff and runoff from the surface of non-glacier part of the basins will disappear. Monthly fluctuations of river flows will change: their volume will decrease in the summer (July-August) and increase in spring-summer time (May-June) which will negatively impact agricultural production in irrigated regions.”<sup>29</sup>

<sup>26</sup> Almaty “suffocates” from cars emissions into atmosphere:

<http://meta.kz/novosti/kazakhstan/836254-almaty-zadyhaetsya-ot-avtomobilnyh-vybrosov-v-atmosferu.html>; October 18, 2013.

<sup>27</sup> Strategy for Kazakhstan...:

<http://www.ebrd.com/downloads/country/strategy/kazakhstan-strategy-2013.pdf>; p.17.

<sup>28</sup> Access to drinking water and sanitation in the Republic of Kazakhstan. – Almaty, UNDP, 2006, p.21.

<sup>29</sup> National report on environmental conditions..., p.62-63.

“A special attention should be given to the issue of influence of degradation of the mountain glaciations on river flow resources of the Lake Balkhash basin, as one of the largest and densely populated. Results of reconstruction of the patterns and balance of the mass of the glacier Tuyuksu located in Malaya Almatinka River basin and on the northern slopes of Zailiisky Alatau showed that from the end of the 19<sup>th</sup> century to the middle of the 20<sup>th</sup> century, its area was slowly but continuously shrinking, from the second half of the 20<sup>th</sup> century, the shrinking rate significantly increased.

In general, volume of glaciers in the Lake Balkhash basin for the indicated period decreased approximately on 110 cubic km (42.2%) or, on average, on 2.19 cubic km (0.84%). Calculations showed that because of decrease of long-term ice and water reserves in glaciers, rivers receive additional 10% of water.”<sup>30</sup>

Decrease of water resources is accompanied by strong pollution of water bodies. “By the level of discharge of polluting organic substances in water Kazakhstan surpasses such countries as Russia, USA, and Germany on 37%, 66%, and 75% correspondingly.”<sup>31</sup> Already in 2006, it was identified that “over the past few years nearly all the surface sources of water supply suffered from considerable pollution by anthropogenic substances, and their water quality is incompliant with regulatory requirements. The pollution of surface sources is particularly difficult in the cities of Kokshetau, Kyzylorda, Shardara, Ekibastuz, Ridder, Lenger, etc.”<sup>32</sup>

Increase of oil extraction also negatively affects conditions of water resources. “Ground waters are polluted with oil products in the areas of all oil and gas sites in Kazakhstan.”<sup>33</sup>

Pollution of water sources has lead to deterioration of quality of drinking water which attracted attention of scientists back in 2000.<sup>34</sup>

“A change of demand for bottled water can be considered an indicator either of the deterioration or improvement of water quality in Kazakhstan. The following connection is established: the more respondents’ opinion of the quality of drinking water is negative, the more bottled water they use for drinking.”<sup>35</sup>

<sup>30</sup> National report on environmental conditions..., p.65.

<sup>31</sup> 40 thousand children suffer from the high level of environmental pollution in Kazakhstan: <http://www.kursiv.kz/news/details/obshchestvo/ot-vysokogo-urovnnya-zagryazneniya-okruzhayush-hej-sredy-v-kazaxstane-stradaet-40-tys-detej>; February 1, 2013.

<sup>32</sup> Access to drinking water..., p.24.

<sup>33</sup> The Fifth national report..., p.41: <http://www.cbd.int/doc/world/kz/kz-nr-05-en.pdf>.

<sup>34</sup> I.V.Severskiy, N.V.Uvarov. Results of research of pollution of snow cover in the basins Bolshaya and Malaya Almatinka. In the book: International ecological Forum “Balkhash-2000”. – Almaty, 2000, p.147-151.

<sup>35</sup> Access to drinking water..., p.78.



In 2012, in his address to the nation, the President of Kazakhstan pointed out the issue of water supply of the country as one of the most crucial: “We have a shortage of quality drinking water. Whole numbers of regions have an urgent need in it.”<sup>36</sup>

In the Concept of transitioning of the Republic of Kazakhstan to the “green economy” (2013), it is said that the “threat of water deficiency and inefficient water resources management can become the main obstacle to sustainable economic growth and social development of Kazakhstan.”<sup>37</sup>

Because of the high importance of this problem, in March 2014, the president signed a Decree about a State Program of Kazakhstan’s Water Resources Management.

### **Land resources and soil pollution**

Studies of the condition of land resources show extremely serious situation: “Analysis of zones of ecological risk of the republic (Northern, Western, Southern, Central, and Eastern Kazakhstan) show that total area of desertification of different extent covers 91.6% of the territory of the republic, no desertification is only found on the area of 8.4% of the territory of the republic. 510.91 thousands of square km or 19.1% of the territory of the republic are subjected to strong and very strong desertification (risk level). Risk zones of critical level of damage are considered as crisis zones. Among the regions of strong and critical level of degradation the largest area is observed in Central and Western Kazakhstan regions – 53.9% and 19.9% correspondingly.”<sup>38</sup>

“Almost third of agricultural lands right now are degraded or under a serious threat, and more than 10 million hectares of potentially plough-lands were abandoned in the past.”<sup>39</sup> “Significant degradation of land resources causes reduction of soil productivity (more than 30%).”<sup>40</sup>

“Pasture lands suffer from overgrazing near populated areas and undergrazing in distant areas which has lead to 20 millions of pasture lands being degraded because of excessive grazing.”<sup>41</sup>

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<sup>36</sup> Address of the President of the Republic of Kazakhstan – the leader of the nation, N.A.Nazarbayev, to the people of Kazakhstan. “Strategy “Kazakhstan-2050”: New political course of an accomplished state” (Astana, December 14, 2012); [http://online.zakon.kz/Document/?doc\\_id=31305418&sublink=204](http://online.zakon.kz/Document/?doc_id=31305418&sublink=204).

<sup>37</sup> Concept of transitioning ... : <http://www.eco.gov.kz/files/koncepciya.htm>, p.14.

<sup>38</sup> Report on “Preparation of the National Report...”, p.69.

<sup>39</sup> Concept of transitioning ... : <http://www.eco.gov.kz/files/koncepciya.htm>, p.4.

<sup>40</sup> Report on “Preparation of the National Report of the Republic of Kazakhstan on biological diversity for 2011”. – Astana. 2012, MEP, p.45.

<sup>41</sup> Concept of transitioning ... : <http://www.eco.gov.kz/files/koncepciya.htm>, p.19.

One of the main causes of unsatisfactory conditions of land resources is a lack of effective waste management. 97% of solid household waste finds their way onto uncontrolled dumpsites and landfills, which do not meet sanitary standards. Also a serious problem comes from historical toxic and radioactive industrial waste.”<sup>42</sup>

“Analysis of the existing problems of solid waste landfills in all populated areas showed that the current system of waste management does not fully meet the modern requirements to this service of public utilities: waste landfills placement is performed without engineering and hydrogeological justifications; no separate collection or recycling facilities exist; no environmental monitoring in landfill areas is conducted; no sanitary or environmental requirements to installation and maintenance of temporarily storage places of solid waste are met; no work on minimization of waste is conducted; technological requirements to exploitation of landfills and dumpsites of solid wastes are not met, in the majority of cases; not all of the generated solid waste reaches approved dumpsites which leads to formation of illegal dumpsters.”<sup>43</sup>

“...Large amount of solid household waste is generated in the republic. Outside of large cities, waste collection services are developed very poorly (about 25%). Waste collection at acceptable levels is performed only in some large cities, for example, Astana (90%), Kokshetau (95%), Ust-Kamenogorsk (85%). But outside of the large cities, up to 75% of waste is not collected and most likely finds it way to illegal dumpsters.

Solid waste is being handled with violations of safety requirements and very low material recovery rate. Enormous amount of waste (97%) is concentrated on dumpsters, dumpsters with dirt cover (“sanitary” cover) make 2%, and only 1% of waste is used for production of heat energy and material recycling, including production of compost. Illegal dumpsters worsen sanitary and epidemiological conditions of large cities and small towns causing high risk of infections and respiratory diseases among the population.”<sup>44</sup> Illegal dumpsters are found even on territories of national parks, downtowns, and memorial sites.

According to the official statistics, from the year 2000 to 2012, number of dangerous waste increased in almost 3.5 times; mining industry waste – more than in 5 times; construction waste – in 42 times. Total amount of waste per unit of GDP increased in 1.47 times.<sup>45</sup>

Raw materials sector contributes to destruction of land resources as well. “Thus, the area of lands, occupied by mining companies, has been steadily

<sup>42</sup> Concept of transitioning ..., p.4.

<sup>43</sup> National report on environmental conditions..., p.103.

<sup>44</sup> Report on “Preparation of the National Report...”, p.49.

<sup>45</sup> Ecological indicators of monitoring and evaluation of the environment:  
[http://www.stat.gov.kz/faces/homePage/ecolog?\\_afLoop=818720429352608#%40%3F\\_afLoop%3D818720429352608%26\\_adf.ctrl-state%3Dy2b317kcr\\_77](http://www.stat.gov.kz/faces/homePage/ecolog?_afLoop=818720429352608#%40%3F_afLoop%3D818720429352608%26_adf.ctrl-state%3Dy2b317kcr_77).

extended; for the period from 2008 to 2012 - to 110,000 hectares, and in general, since 2000 from 580,000 ha to 910,000 ha. In the last 5 years the oil and gas production areas, uranium mines, etc., were extended in the Western Kazakhstan, eastern PriCaspian region, the Betpakdala desert. The statistics does not reflect extensive areas of preliminary explorations of mineral resources, also causing displacement of, at least, cautious animals.”<sup>46</sup>

### **Increase of sickness rate caused by environmental pollution**

Studies of sickness rate caused by environmental pollution in Kazakhstan show that the main reasons are pollution of atmospheric air, water, and soil. “High level of atmospheric air pollution in urban areas (cities, industrial centers) with emissions level several times higher than the maximum permissible emissions level serves an origin of increase in sickness rate in population which is expressed in significant state expenses on health improvement and is a serious factor of decrease of resource potential/biodiversity of ecosystems. Atmospheric air pollution with solid particles in urban areas of Kazakhstan causes approximately 40 deaths per 100 thousand people. Total expense related to the negative influence of atmospheric pollution over public health are around 1.7% of GDP as of 2010, and 90% of the expenses are related to high death rate.”<sup>47</sup> In other words, 6,000 Kazakhstan citizens die prematurely each year as a result of air pollution.

About 40 thousand children suffer from various neurological diseases as a result of environmental pollution.<sup>48</sup>

Public health studies in Aral Sea region demonstrate even more serious situation. “Leading environmental factors which determine health quality of the population living in Aral Sea region are: dry, continental climate; high mineralization, pollution and deficit of drinking water, and also desertification of territories. In these conditions, risk of cancer, tuberculosis, and diabetes has increased.”<sup>49</sup>

“Kazakhstan is facing challenges in restructuring its healthcare system and its health outcomes are lagging behind its rapidly increasing income. At 68 years, the life expectancy is at the level of EU-15 back in 1950.”<sup>50</sup> This is taking place, despite of increase of the portion of GDP spent on public health.<sup>51</sup>

<sup>46</sup> The Fifth national report ..., p.55: <http://www.cbd.int/doc/world/kz/kz-nr-05-en.pdf>.

<sup>47</sup> Report on “Preparation of the National Report...”, p.48.

<sup>48</sup> 40 thousand children suffer from the high level of environmental pollution in Kazakhstan: <http://www.kursiv.kz/news/details/obshchestvo/ot-vysokogo-urovnya-zagryazneniya-okruzhayush-hej-sredy-v-kazaxstane-stradaet-40-tys-detej>, February 1, 2013.

<sup>49</sup> Report on “Preparation of the National Report...”, p.59-60.

<sup>50</sup> Strategy for Kazakhstan...:

<http://www.ebrd.com/downloads/country/strategy/kazakhstan-strategy-2013.pdf>; p.15.

<sup>51</sup> WHO European Region: Kazakhstan statistics summary:

<http://apps.who.int/gho/data/node.country.country-KAZ>.

## Conclusion

The main result of deterioration of the ecological situation is limitation of public access to national natural resources, in particular, to primary needs resources: drinking water, quality food, clean air, and recreational resources. Lowering of quality of life accompanied by massive violations of human rights on favorable environment more and more often becomes a source of public discontent and social tension, causes public protests. One of the examples is a public movement formed in 2012-2013 in defense of Kok-Zhailau Hollow, central part of Ile-Alatau National Park, located near the city of Almaty.<sup>52</sup> The public protests against the plans of construction of a mountain ski resort on the territory of the national park.

Lack of a clear environmental policy in the country lead to the situation when big businessmen oriented on extraction of natural resources and global budget programs together with interested officials became a force which forms environmental legislation and state programs in this sphere. "Equidistant position of all market players from the power" was not achieved.<sup>53</sup> Commercial structures transfer environmental costs on tax-payers, remake the legislation for specific projects, and even do not try to hide it. According the Environmental Performance Index prepared in 2012 by the University of Yale, Kazakhstan takes the 129<sup>th</sup> place out of 132 countries studied.<sup>54</sup>

Public officials often admit the seriousness of the situation: "Irrational utilization of natural resources, environmental pollution and, consequently, deterioration of the quality of the environmental and human health, also caused by the forced industrial and innovative development of our country, at the current stage, require implementation of more effective triggers for lowering the anthropogenic pressure on the environment."<sup>55</sup> But other than the admission, no actions are being taken.

Decree of the president No.1241 dated on December 3, 2003, "About Concept of environmental safety of the Republic of Kazakhstan on 2004-2015" lost its validity by a decree of the president No.47 dated on April 13, 2011. Goals made in the Concept were not achieved which became obvious already in 2011.

<sup>52</sup> Protect Kok-Jailau, one of the most popular places of Ile-Alatau National Park:

<http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=328&cntnt01detailtemplate=news02detail.tpl&cntnt01returnid=51>.

<sup>53</sup> [http://ru.wikipedia.org/wiki/%D0%9F%D1%83%D1%82%D0%B8%D0%BD\\_%D0%92%D0%BB%D0%B0%D0%B4%D0%B8%D0%BC%D0%B8%D1%80\\_%D0%92%D0%BB%D0%B0%D0%B4%D0%B8%D0%BC%D0%B8%D1%80%D0%BE%D0%B2%D0%B8%D1%87](http://ru.wikipedia.org/wiki/%D0%9F%D1%83%D1%82%D0%B8%D0%BD_%D0%92%D0%BB%D0%B0%D0%B4%D0%B8%D0%BC%D0%B8%D1%80_%D0%92%D0%BB%D0%B0%D0%B4%D0%B8%D0%BC%D0%B8%D1%80%D0%BE%D0%B2%D0%B8%D1%87).

<sup>54</sup> 2012 Environmental Performance Index (EPI):

[http://epi.yale.edu/files/2012\\_epi\\_summary\\_for\\_policymakers.pdf](http://epi.yale.edu/files/2012_epi_summary_for_policymakers.pdf).

<sup>55</sup> Strategic Plan of the Ministry of Environmental Protection of the Republic of Kazakhstan for 2011-2015. Adopted by the Statement of the Government of the Republic of Kazakhstan No.98 dated on February 8, 2011.

“Program on fighting desertification in the Republic of Kazakhstan on 2005-2015” lost its validity by a statement of the government No.162 dated on February 19, 2008. New program was not adopted yet.

Decree of the president “About the Concept of transitioning of the Republic of Kazakhstan to sustainable development on 2007-2024” lost its validity, in accordance with the decree of the president No.47 dated on April 13, 2011. Thus, groundlessness of the concept was confirmed.

A Branch Program “Zhassyl damu” was adopted in 2010. Its purpose is “creation of conditions of conservation and recovery of natural ecosystems.” The program goals are “development of “green economy;” reduction of anthropogenic impact on the components of the environment and health; preservation and recovery of natural ecosystems...”

In January 2013, Counting Committee noted that “at the intermediate stage, implementation of the Branch Program “Zhassyl damu” on 2010-2014 is not effective enough; there is no necessary coordination for implementation of the Program measures between responsible state officials.

Specific measures on lowering of environmental pollution level, creation of mechanisms of ecological sustainable development, transition to regulation based on the best accessible technologies for large industrial enterprises, protection and reproduction of forests are not implemented. Total cost of identified violations of the budget requirements and other legislative provisions is 7.5 billion tenge.”<sup>56</sup>

Only time will show how long the Concept of transitioning of the Republic of Kazakhstan to the “green economy” will last.

**Material is prepared by Sergey Kuratov, Nataliya Medvedeva,  
Svetlana Spatar**

**Translated by Sofya Tairova**

<sup>56</sup> <http://esep.kz/rus/showin/article/1618>, January 17, 2013.

See also: [http://online.zakon.kz/Document/?doc\\_id=31508108&search=%D0%96%D0%B0%D1%81%D1%8B%D0%BB%20%D0%94%D0%B0%D0%BC%D1%83&spos=1&tSynonym=1&tShort=1&tSuffix=1](http://online.zakon.kz/Document/?doc_id=31508108&search=%D0%96%D0%B0%D1%81%D1%8B%D0%BB%20%D0%94%D0%B0%D0%BC%D1%83&spos=1&tSynonym=1&tShort=1&tSuffix=1).



## To the Question of Compliance by the Republic of Kazakhstan with the Aarhus Convention

In summer 2014, the Fifth Meeting of the Parties of the Aarhus Convention (AC) will take place in the city of Maastricht (Netherlands). As required by the Convention, the Republic of Kazakhstan prepared a compliance report. The document presented by the country,<sup>1</sup> in our opinion, does not reflect many important aspects which need to be described, in accordance to the reporting requirements.<sup>2</sup>

### 1. General comments

Another report of the Republic of Kazakhstan has the same deficiencies as the report of 2011. Authors paid unreasonably a lot of attention to analysis of the legislation of the country, even in the sections where they needed to describe practical actions of state authorities: sections 5, 9, 13, 17, 22, 26, 30. Obstacles, which impede or block implementation of provisions of the Convention, are analyzed insufficiently: sections 4, 8, 12, 21. The report practically lacks of statistical data and specific facts of application of the Convention, does not give full answers to the set questions, uses outdated information.<sup>3</sup>

As one of the main obstacles to comply with the Convention, the authors correctly name deficiencies and contradictions of the current legislation. Although, at the same time, they state that it conforms to the provisions of the articles 4, 5, 7<sup>4</sup> of the Convention. Based on many years of monitoring of the ecological legislation, the Ecological Society Green Salvation not a single time pointed out numerous deficiencies and contradictions,<sup>5</sup> discrepancies with the provisions of the Convention.

But there are many other obstacles which are not mentioned in the report. The authors do not indicate numerous cases of violation of the laws and Convention by state organs of all levels, their inaction, and abuse of authority. Nothing is said about violations committed by the organs of justice and the

<sup>1</sup> National Reports on Implementation. Kazakhstan. 2014: [http://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2014&wf\\_Countries=KZ&wf\\_Q=QA&Quer\\_ID=&LngIDg=RU&YearIDg=2014](http://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2014&wf_Countries=KZ&wf_Q=QA&Quer_ID=&LngIDg=RU&YearIDg=2014).

<sup>2</sup> Guidance on Reporting Requirements:

[http://www.unece.org/env/documents/2007/pp/ece\\_mp\\_pp\\_wg\\_1\\_2007\\_L\\_4\\_e.pdf](http://www.unece.org/env/documents/2007/pp/ece_mp_pp_wg_1_2007_L_4_e.pdf).

<sup>3</sup> See, for example: in section 1 – “Analysis of court decisions for the period of 2008-2011”; in section 5 – “From 2007 to 2009, the Program of decreasing of informational inequality was active.”

<sup>4</sup> National Reports on Implementation. Kazakhstan. 2014; section 7, p.10; section 11, p.13.

<sup>5</sup> See, for example: Let us preserve the nature for the future, or Eleven threats to national parks: <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=515&cntnt01etumid=67>.

Prosecutor's Office. The report does not cover facts of gross ecological crimes committed by business entities of all forms of property, including state and trans-national companies. Not enough attention is drawn to the systemic problems, in particular, endless redistribution of powers of the state organs, extreme decentralization of governance,<sup>6</sup> corruption, which paralyze activity of the environment protection organs.<sup>7</sup>

Authors of the report indicate that there are contradictions in different legal acts.<sup>8</sup> But they do not mention that, in a number of cases, these contradictions can be solved by a correct application of the Law "About Normative Legal Acts" and the Aarhus Convention. But there is not only a unique application of the Convention in the country, many authorities consider its provisions as recommendations, many are still not familiar with the document.

In the past 3-4 years, a noticeable trend of weakening of the nature protection legislation appeared under excuse of improvement of investments climate, support of development of small and medium business,<sup>9</sup> diversification of economy. But the authors of the report do not explain the reasons behind introduction of numerous amendments into legislation which, in a number of cases, multiply contradictions and paralyze the laws. For example, amendments introduced into the Law "About Specially Protected Natural Territories" in 2008-2013 under excuse of improvement of conditions for tourism development opened ways for plunder and destruction of the most valuable natural territories of our country.<sup>10</sup> Finally, there is no mention that the current environmental protection legislation contradicts more and more to the requirements of the international conventions ratified by the

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<sup>6</sup> The report "Avenues for Improved Response to Environmental Offences in Kazakhstan" published by the Organization for Economic Co-operation and Development in 2009, states the following: "... a poorly orchestrated decentralization creates the danger of institutional over-fragmentation and inconsistency, as well as raises concerns over the capacity of sub-national bodies to undertake roles given to them". Avenues for Improved Response to Environmental Offences in Kazakhstan. – OECD, 2009, p.15: <http://www.oecd.org/dataoecd/2/20/42072582.pdf>.

<sup>7</sup> Nazarbayeva called ministries helpless. According to the deputy, this is caused by decentralization of power in Kazakhstan:

<http://kapital.kz/gosudarstvo/25798/nazarbaeva-nazvala-ministerstva-bessilnymi.html>; January 21, 2014.

<sup>8</sup> For example: "According to the new edition of the Law "About earth deposits and deposit exploitation", only terms of competition for the right to develop deposits are open to public, while terms of contracts, including the part of environmental protection, are kept in secret. The provision that "all interested public associations have a right to receive information related to environmental impact from conducted or planned operations on deposits development" is excluded. National Reports on Implementation. Kazakhstan. 2014; section 5, p.7.

<sup>9</sup> Kazakhstan develops a new law about consumers rights protection:

<http://panoramakz.com/index.php/authority/establishments/item/35150-kazakhstan-razrabatyvaet-novyy-zakon-o-zashchite-prav-potrebitelej>; May 6, 2014.

<sup>10</sup> As a result of the amendments introduced into the law during 2008-2013, it became possible to expropriate lands from the national parks (Article 23, p.2), and rent lands for 49 years (Article 46, p.2).

Republic of Kazakhstan: the World Heritage Convention, Convention on Biological Diversity, Convention on Environmental Impact Assessment in a Transboundary Context, Convention on the Conservation of Migratory Species of Wild Animals, the Aarhus Convention, and others. Meantime, the Ministry of Environment and Water Resources (MEWR) is directly related to the weakening of the environmental legislation.<sup>11</sup>

Authors of the report do not indicate that the right of the public to participate in decision making process, proclaimed in the Environmental Code (EC), cannot be realized because mechanisms for its realization are still not created. In section XXV of the Second National Report (2011), this fact was partially admitted: “The right of the public of the RK to participate in lawmaking process is declared in the legislation... Life shows that as for today, in Kazakhstan, many aspects of participation of the public in the lawmaking process do not have a legal basis... As a result, often the public does not have a real opportunity to participate in the process of lawmaking, except for some single cases.”<sup>12</sup> For the last three years, the situation did not change. In the Constitution of the country, the rights of the citizens on favorable environmental are not declared. The country did not sign the Convention for the Protection of Human Right and Fundamental Freedoms (1950), as a result, the citizens of Kazakhstan, do not have an access to the European Court on Human Rights.<sup>13</sup>

State organs, including courts, still make their decisions based on outdated legal norms incompliant to the requirements of the Convention, do not use or use incorrectly its provisions, basically, bring it out of the law-enforcement practice. This leads to violation of the rights given to the citizens by this international agreement. Although, authors of the report indicate that in the nearest time,<sup>14</sup> it is planned to bring the national legislation in conformance with the requirements of the Convention. But such promises are being announced practically from the moment of adoption of the Environmental

<sup>11</sup> Nazarbayev signed amendments which reduce the fines for excess emissions in half: <http://www.zakon.kz/4618493-nazarbaev-podpisal-popravki-vdvoe.html>; April 21, 2014. Fines for greenhouse gases emissions will be reduced – Nurlan Kapparov; March 5, 2014: <http://www.zakon.kz/4607534-shtraf-za-vybrosy-parnikovykh-gazov.html>.

<sup>12</sup> Second National Report on Implementation of the Aarhus Convention, p.40: <http://www.eco.gov.kz/sotrudnichestvo/index.php>.

<sup>13</sup> Status as of: 04.05.2014:

<http://conventions.coe.int/treaty/Commun/ChercheSig.asp?NT=005&CM=&DF=&CL=ENG>.

<sup>14</sup> “Draft law on the matters related to the Aarhus Convention intends to bring the norms of the Law “About administrative procedures” and the Law “About the order of reviewing statements from physical and juridical persons” (Article 8) into the full compliance with the norms of the Aarhus Convention (p.2, Article 4).” National Reports on Implementation. Kazakhstan. 2014; section 7, p.10: [http://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2014&wf\\_Countries=KZ&wf\\_Q=QA&Quer\\_ID=&LngIDg=RU&YearIDg=2014](http://apps.unece.org/ehlm/pp/NIR/listnr.asp?YearID=2014&wf_Countries=KZ&wf_Q=QA&Quer_ID=&LngIDg=RU&YearIDg=2014).

Code in 2007. Already in two years, in the Concept of legal policy of the Republic of Kazakhstan for the period of 2010-2020, it was stated: “For our country, where a complicated environmental situation is observed in a number of regions, it is quite urgent to develop and further improve the environmental legislation, including the context of its harmonization with the international obligations and standards.”<sup>15</sup> Hundreds of amendments introduced into the Environmental Code beginning July 27 2007<sup>16</sup> did not improve the situation.<sup>17</sup>

## **2. Comments on specific sections of the report Implementation of the paragraph 8 of the Article 3**

In the section 3 of the report, it is said: “As for today, there are no documented facts of persecution of representatives of the public who realize their rights in accordance with the Convention.”

The authors either do not know, or intentionally veil the facts, some of which were documented and became known by the wide public. Since 2011, the following facts of persecution and oppression of activists took place: hooligan attack on residents of Irgali village with damage to their property (photos made, statements filed to the police and Prosecutor’s Office); numerous calls of the activists to the police organs; threats of being fired; numerous publications in the mass-media containing insulting and untrue information. One of such publications was included in the news line of the website of the National Aarhus Center of the Republic of Kazakhstan. After a protest from the public, the Minister of Environmental Protection, made official apologies,<sup>18</sup> and the link was deleted. An opened pressure was organized over a citizen of Germany, participant of the movement “Protect Kok-Jailau!”<sup>19</sup>

<sup>15</sup> Concept of legal policy of the Republic of Kazakhstan for the period of 2010-2020. Adopted by the Decree of the President of the Republic of Kazakhstan No.858, dated on August 24, 2009, subsection 2.6: [http://adilet.zan.kz/rus/docs/U090000858\\_#z7](http://adilet.zan.kz/rus/docs/U090000858_#z7).

<sup>16</sup> Environmental Code of the Republic of Kazakhstan:

[http://online.zakon.kz/Document/?doc\\_id=30085593#pos=1;-8](http://online.zakon.kz/Document/?doc_id=30085593#pos=1;-8).

<sup>17</sup> See: Dagmar Shraiber: Do not pay silence in exchange for raw materials:

<http://rus.azattyq.org/content/dagmar-shraiber-disput-v-bundestage-o-kazakhstane/25292998.html>; March 11, 2014.

<sup>18</sup> Official blog-platform; [http://blogs.e.gov.kz/ru/blogs/kapparov\\_n/questions/179835](http://blogs.e.gov.kz/ru/blogs/kapparov_n/questions/179835); May 8, 2014.

<sup>19</sup> German activist was asked not to interfere into the dispute around Kok-Zhailau:

[http://i-news.kz/news/2013/10/26/7242098-nemeckuyu\\_aktivistku\\_poprosili\\_ne\\_vmeshi.html](http://i-news.kz/news/2013/10/26/7242098-nemeckuyu_aktivistku_poprosili_ne_vmeshi.html); October 26, 2013.

Kazakhstan public representatives ask power authorities to take care of a German expert on ecotourism:

[http://i-news.kz/news/2013/10/23/7238465-kazahstanskie\\_obschestvenniki\\_prosyat\\_vl.html](http://i-news.kz/news/2013/10/23/7238465-kazahstanskie_obschestvenniki_prosyat_vl.html); October 23, 2013.

## Implementation of the Articles 4 and 5

In the “Guidance on Reporting Requirements”, prepared by the Compliance Committee back in 2007, it is said that reports must contain more information about practical measures undertaken to comply with the provisions of the Convention.<sup>20</sup>

Authors of the report do not specify that residents of the majority of the cities and villages of the republic still do not have an access to actionable information about environmental conditions. For example, in accordance with the Republic State Enterprise “Kazgidromet”, only 34 cities of the republic,<sup>21</sup> i.e. only 40% of the cities of Kazakhstan,<sup>22</sup> have 104 stationary observation points to monitor conditions of the atmospheric air. The Ministry of Environment and Water Resources (MEWR) publishes monthly Informational Bulletin about conditions of the environment of the Republic of Kazakhstan,<sup>23</sup> which also lacks of actionable information. The State Fund of Environmental Information located on the website of the Aarhus Center of the Republic of Kazakhstan also does not have such information.<sup>24</sup>

Authors of the report do not point out the miserable conditions of the services performing environmental monitoring. For example, the strategic plan of the MEWR says: “In its development, the hydro-meteorological service of Kazakhstan reached its apogee in the 80s of the last century. But since then, the situation abruptly worsened. In the period from 1983 to 1999, “Kazgidromet” had to close about 35% of the surface meteorological stations, 65% of hydrological posts, 55% agro-meteorological observation points, and 47% of air monitoring stations.

Starting from the year 2000, works on recovery of the closed stations and creation of new points of the monitoring network and analytical laboratories have begun. ... The territory of the republic is covered by meteorological monitoring on 61%, agro-meteorological monitoring – 66%, hydrological monitoring – 57%, atmospheric air monitoring – 31%.

Objects of infrastructure (service buildings) almost on the whole territory of the country are in a desperate condition, work conditions of the employees on places are unsatisfactory which combined with low wages creates serious

<sup>20</sup> Guidance on Reporting Requirements, paragraphs 32-33:

[http://www.unece.org/env/documents/2007/pp/ece\\_mp\\_pp\\_wg\\_1\\_2007\\_L\\_4\\_e.pdf](http://www.unece.org/env/documents/2007/pp/ece_mp_pp_wg_1_2007_L_4_e.pdf).

<sup>21</sup> RSE Kazgidromet: [http://www.kazhydromet.kz/ru/about\\_oksreda/](http://www.kazhydromet.kz/ru/about_oksreda/);

[http://www.kazhydromet.kz/ru/mon\\_oksreda/](http://www.kazhydromet.kz/ru/mon_oksreda/); May 10, 2014.

<sup>22</sup> 86 places of Kazakhstan have a status of a city. “Program Ak-bulak for 2011-2020:”

<http://minregion.gov.kz/rus/%D0%BF%D1%80%D0%BE%D0%B3%D1%80%D0%B0%D0%BC%D0%BC%D1%8B-%D0%B8-%D0%BA%D0%BE%D0%BD%D1%86%D0%B5%D0%BF%D1%86%D0%B8%D0%B8/>; May 10, 2014.

<sup>23</sup> Environmental bulletin: <http://www.eco.gov.kz/new2012/activity-of-state-authority/information-about-the-environmental-situation-in-the-regions-of-kazakhstan/ecobul/>.

<sup>24</sup> The State Fund of Environmental Information: <http://aarhus.kz/1-17/1-3/>; May 10, 2014.

problems for recruitment. Most of the observation points require manual data collection.”<sup>25</sup> Lack of a well operated system of data collection is one of the main obstacles for implementation of the Article 5 of the Convention.

Section 9 of the report does not take a look over the practice of providing of information by various state organs. It does not analyze quality of the provided information, does not tell about the fact that many authorities provide the public with untrue or incomplete data or even ignore public statements at all. State organs ignore even statements from international non-profit organizations. For example, on April 12, 2012, honorary president of the Nature Protection Union of Germany (NABU), laureate of the alternative Nobel Prize, professor, doctor Michael Succow and vice president of the NABU, chairman of the NABU International Fund, Thomas Tennhardt addressed the president of Kazakhstan with a request to reject construction of a mountain ski resort in Ile-Alatau National Park. Copies of the petition were submitted to the Minister of the Environment, Kapparov N.D., Minister of Agriculture, Mamytbekov A.S., and Minister of Industry and New Technologies, Issekeshev A.O.<sup>26</sup> None of the addressees replied the petition.

The Ecological Society Green Salvation sends more than hundred inquiries to state organs annually; its experience shows the following numbers. In 2010, there were 173 letters sent. Only 123 (71%) were replied, including 8 (6%) containing poor quality information, insufficient to make a decision. The other 50 inquiries (29%) were ignored. In 2013, the organization sent 136 letters to different organs. 73% of the letters were replied. Poor quality information, insufficient to make a decision was contained in 72% of the received replies. 27% of the inquiries were ignored.<sup>27</sup> Compare to 2010, the quality of the provided information significantly decreased. Failure to provide information became a regular practice for the state authorities. Even by addressing a court,

<sup>25</sup> Strategic Plan of the Ministry of Environmental Protection of the Republic of Kazakhstan for 2011-2015;

Adopted by the Decree of the Government of the Republic of Kazakhstan No.98 dated on February 8, 2011. Section 2. Analysis of the current situation and trends of development of related areas of activity: [http://www.eco.gov.kz/files/strat\\_pl12.02.htm](http://www.eco.gov.kz/files/strat_pl12.02.htm); May 10, 2014.

<sup>26</sup> Statement of the Nature Protection Union of Germany to the President of Kazakhstan in relation to the project “Kok-Zhailau”: [http://www.greensalvation.org/index.php?page=NABU\\_KJ](http://www.greensalvation.org/index.php?page=NABU_KJ); April 12, 2012.

<sup>27</sup> Since 2008, the situation practically did not change. In 2008, the public funds “Medialife” (Kara-ganda) and “Decenta” (Pavlodar) conducted a survey on access to information provided by state organs. As a part of the research, inquiries were sent to state organs of the state level. “Replies were received for 52 requests, which is 62% of the total amount... 20 requests were ignored, which makes 27%. In other cases, the information was incomplete.” Situation with requests to the local authorities is even worse. “...There were 1038 requests sent. Replies were received for 476 requests, which makes 45.9% of the total amount... The rest 562 requests (54.1%) were left without a reply.” Realization of the right on access to information in Kazakhstan. – Astana, 2008, p.56, p.64: <http://www.internews.kz/node/5488>.



the public is not guaranteed to receive information. Often, state authorities ignore court decisions.<sup>28</sup> The report says nothing about failure to meet deadlines for providing information by the state organs, about continuing provision of incomplete and untrue information.

At the same time, the report authors note that changes introduced into the legislation create obstacles for receiving information, hiding of information is taking place under excuses of commercial secret.<sup>29</sup> For example, in accordance with the Article 130, p.2, sub-p.9 of the Environmental Code, results of industrial environmental control are open, and companies are obliged to provide public access to them. But usually, these requirements are not met.

### **Implementation of the Article 6**

In 2005, the Second Meeting of the Parties adopted a decision II/5a “Compliance by Kazakhstan with its obligations under the Aarhus Convention.” In particular, it notes that the public is not provided with a full spectrum of opportunities to participate in decision making process in the country.<sup>30</sup> Despite of the opinion of the Meeting of the Parties, filed lawsuits of the public, complaints of non-profit organizations, specialists, and regular citizens, for the past nine years, the state organs did nothing to create mechanisms for implementation of the public right on participation in decision-making process. This is demonstrated by the fact that among hundreds of the amendments introduced into the Environmental Code, there is not a single one which would widen up or specify rights of physical and juridical persons in the area of environmental protection.

In the section 16 (p.20), the report authors admit that even updated edition of the Rules of conducting of public hearings (2007) “does not exclude a possibility of conducting formal public hearings without due comprehensive consideration of all possible consequences of a planned economic activity, i.e. basic principles of EIA...”

“Current Rules of conducting of the state environmental assessment (SEA) does not contain procedural norms about public participation in a process

<sup>28</sup> See: <http://www.greensalvation.org/index.php?page=iski2013>; case No.2 and No.4.

<sup>29</sup> Letter of the Tourism Department of Almaty City №02-01/3T-K-41 dated on December 12, 2013. In the paragraph 7 of the decision II/5a to the Republic of Kazakhstan, it was recommended:

“a) Adopt and implement regulations setting out more precise public participation procedures covering the full range of activities subject to article 6 of the Convention, without in any way reducing existing rights of public participation;

b) Ensure that public authorities at all levels, including the municipal level, are fully aware of their obligations to facilitate public participation; and

c) Consider introducing stronger measures to prevent any construction work going ahead prior to the completion of the corresponding permitting process with the required level of public participation.”

of conducting the SEA. The aspect of public involvement at the very initial stage of the process making environmentally significant decisions – selection and reservation of a land lot for a planned economic activity – is not written down. The Land Code does not stipulate public involvement at this initial stage (paragraph 1, page 43). Discrepancies between the basic national legal norms of land legislation and norms of environmental protection legislation – Article 6 of the Environmental Code and Rules of conducting of the State Environmental Assessment may complicate implementation of the paragraph 4 of the Article 6 of the Aarhus Convention.”

But the authors of the report do not indicate that the initial edition of the Rules, adopted in 2007, contradicted provisions of the Convention and that the Rules acquired their modern look only after many years of protests of the public and two years of court proceedings of the Ecological Society Green Salvation and local residents with the MEWR. Saving the face of the authorities, the court did not satisfy the claimants’ demands. But corrections introduced into the Rules on March 26 2013, in many aspects satisfy the lawsuit demands. It should be noted that the new edition of the Rules still contradicts to the paragraph 1 of the Article 36 of the Environmental Code and Article 6 of the Convention. Probably, that is why, already after publication of the National Report, the MEWR addressed, in particular, to the public with an offer to introduce new amendments to the Rules.<sup>31</sup>

Although, in the new edition of the Rules, it is stated that public hearings are one of the forms of realization of public rights on participation in decision-making process, in practice, the state organs thrive to limit participation of physical and juridical persons solely to public hearings.

The report authors do not indicate that public hearings are organized with strong violations, do not bring specific examples. The report does not mention any cases when public opinion was ignored. In practice, such ceases happen all the time.<sup>32</sup> Usually, a developer of a planned activity conducts the hearings already after a decision was made by the state organs without a timely notification of the public, without duly prepared project documentation.

In section 15 (page 17), the report authors indicate: “In Kazakhstan, requirements of the Article 6 of the AC are applied not only to large scale projects and types of activities included in Appendix I of the Convention, but to all projects of economic or other activity which require EIA (environmental impact assessment) procedure. According to the paragraph 2, Article 40 of the Environmental Code, different requirements to conducting of the EIA of objects of different categories are stipulated by the Instruction on

<sup>31</sup> Letter of the Ministry of Environment and Water Resources No.02-01-29/793i dated on May 20, 2014.

<sup>32</sup> <http://www.greensalvation.org/en/index.php?page=human-rights>.

conducting the EIA. In Appendices 1 and 2 of this Instruction, there is a more comprehensive, compare to the Appendix I of the AC, list of objects (types of activities) which are recommended for EIA.”

But the report does not mention that state organs often deny necessity of public participation in the EIA procedure at all, use unclear wording of the legislation, and sometimes, in violation of the Article 36 of the Environmental Code, simply ignore them.

Sometimes, state organs take decisions based on falsified by developer information, not checking it out first. Entrepreneurs even dare to falsify public hearings.<sup>33</sup> Because of the fact that state authorities apply the legislation not uniformly, in separate cases same issue gets opposite decisions.

The report authors do not talk about serious problems which appear as a result of unjustified separation of functions between environmental protection departments and organs of executive power. No mention about random transfer of authority from one department to another which violates the law. In result, public hearings can be conducted by organs which do not have an authority to do that.

Authors of the report do not indicate cases when local power authorities intentionally create obstacles for people’s participation in public hearings. As a result, far from everybody are able to take part in it and express their opinion. For example, on April 2, 2014, residents of the city of Almaty filed a lawsuit about acknowledging the public hearings and protocol of the hearings about allocation of a part of the lands of the specially protected natural territory (Ile-Alatau National Natural Park) for construction of a mountain ski resort “Kok-Zhailau” to be invalid. The reason for the lawsuit became the fact that they were not given a chance to speak out during the hearings.<sup>34</sup>

In section 17 of the report (page 22), it is said that according to the Rules of conducting of public hearings, local executive organs must publish announcements and protocols of public hearings in the Internet... “Analysis of websites of the oblast departments of environmental protection, as of 23.09.13., local executive authorities showed that majority of the websites lack of a section where announcements about public hearings and protocols of their results would be published”. It should be noted that a section of the website of the Aarhus Center of the Republic of Kazakhstan about conducting of public hearings is not informative enough either.<sup>35</sup>

In section 16 (page 21), the authors indicate that “public organizations of the RK raise a question about objectivity of provided to the public information, including the information discussed during EIA, because the system of

<sup>33</sup> How we defend our rights. April 22, 2014; <http://www.greensalvation.org/index.php?page=manasa>.

<sup>34</sup> See: <http://www.greensalvation.org/index.php?page=iski2014>; case No.6.

<sup>35</sup> Aarhus Center: <http://aarhus.kz/1-11/1-7/>; May 10, 2014.

monitoring does not meet modern requirements and the provided information is often derived from calculations.”

Poor quality of the provided information and its incompleteness are serious obstacles for effective public participation in decision-making process. Even materials of EIA for expensive investment projects are made in rush with a large amount of inaccuracies and contradictions. For example, in the EIA materials provided during the above mentioned public hearings about allocation of a part of the lands of Ile-Alatau National Park for construction of a mountain ski resort “Kok-Zhailau”, it says: “Works on this project showed that there are not enough of truthful data for an argumentative statement and adoption of correct decisions... A lot of data is old, some incorrect decisions are needed to be reviewed using modern methods and technologies. Without solving this issue, it is impossible to make a prognosis about potential negative processes and incidents.”<sup>36</sup>

EIA developers which are persons, who have licenses on such activity, often obediently follow desires of a customer. And organs of control submissively follow the orders of local power authorities which once again confirm the high level of corruption of the state organs. Numerous methods of removal of the public from the decision-making process are widespread. But in these conditions, the state organs are caring about creating an image of lawfulness and implementation of the public rights.

### **Implementation of the Article 7**

In section 19, (page 23), the report authors indicate: “In Kazakhstan, draft program documents related to environmental protection are widely discussed with the public, public suggestions are collected and considered. Discussion of the program documents involves public represented by non-profit organizations, authorized state organs, specialized expert organizations, expert-ecologists, scientists, and professors of specialized higher educational institutions.”

In section 20 (page 23), the authors make a conclusion: “The current legislation in the RK in relation to preparation and development of important for environmental strategic decisions documents, such as plans, programs, and policies, put a base for involvement of the public into this process...”

But in section 21 (page 24), the tone somewhat changes: “The Rules of conducting of public hearings do not contain all the diversity of forms and criteria of effectiveness (timeliness, fullness, and adequacy) of public

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<sup>36</sup> “Feasibility study of transferring the lands of specially protected natural territories of Ile-Alatau State National Natural Park into lands of reserve for construction of a mountain ski resort “Kokzhailau”, p.91.

participation in environmentally significant decision making process during development of state, industrial, and regional programs of development of clusters of economy, schemes of placement of production forces... Experience of conducting of strategic environmental evaluation of plans, policies, and programs is still not available.”

And in section 22 (page 24), the authors express even rougher: “Public participation in development of strategies, policies, programs often have a formal nature. There are no mechanisms of back-coupling between persons who take decisions and public on issues discussed. It is planned to improve the legislation with the draft law on questions related to the Aarhus Convention.” The two later statements reflect the real situation quite accurately.

Bright example, which demonstrates removal of the public from discussion of plans and programs, is adoption and implementation of the “Plan of development of mountain ski resorts of world class in Almaty oblast and near the city of Almaty” which was signed by that decree of the government of Kazakhstan No.1761 dated on December 29, 2012. Public was not involved into discussion of the Plan. The Ministry of Industry and New Technologies believes that the “Plan of development of mountain ski resorts of world class in Almaty oblast and near the city of Almaty” is not an object of the state environmental assessment, and therefore, does not require discussion with the public.<sup>37</sup>

On May 31, 2013, a group of residents of the city of Almaty, who believes that their removal from decision making process on the project of construction of the mountain ski resort “Kok-Zhailau”, is a violation of their rights, submitted a statement to the Aarhus Convention Compliance Committee. The Committee accepted it for consideration.<sup>38</sup>

The statement tells not only about the violation of the citizens’ rights, but also about general failure of the state organs to provide public participation in solution of questions related to plans, programs, and policies, in accordance with the Article 7 of the Convention. Although the public statement was accepted by the Committee for a review in summer 2013, the report authors do not mention about it in the report.

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<sup>37</sup> Letter of the Ministry of Industry and New Technologies No.16-06/2-6963//11-23/H-284 dated on 07 March 2013. Law No.124-V dated on July 3, 2013, eliminated the sub-paragraph 2, paragraph 1, article 47 of the Environmental Code, which stated that among others objects of environmental assessment include “projects of state, branch, and regional programs with accompanying materials of environmental impact assessment.”

<sup>38</sup> Statement to the Aarhus Convention Compliance Committee No. ACCC/C/2013/88:

<http://www.unece.org/env/pp/compliance/compliancecommittee/88tablekaz.html>.

The preliminary determination of the Committee is that the communication is admissible (June 28, 2013).

## Implementation of the Article 8

In section 24 (page 25), the authors mention: “In recent years in Kazakhstan, majority of draft laws on environmental protection are discussed with public.” This statement is supported neither by statistics, nor by analytical information.

In section 25 (page 25), the authors correctly indicate: “The legislation does not state a mechanism of implementation of public participation in law making process. Suggestions from public representatives are not obligatory for inclusion into a comparison chart of corrections to a draft law. Practically, there are no mechanisms of back-coupling for suggestions of the public... As a result, often, the public does not have a real opportunity to participate in law making process, except for some single cases.”

Finally, in section 26 (page 26), there is a very peculiar conclusion: “Discovered during preparation of this National Report gaps and contradictions in the legislation of the RK may serve a good ground for public participation in law making process according to the Article 8 of the AC”. The report authors, probably, did not pay attention to the fact that this phrase word-to-word repeats a phrase from the I section of the Second National Report on Compliance with the Aarhus Convention of 2011, page 3.<sup>39</sup>

In other words, the authors admit that during these three years, nothing was created on this “good ground?!” Of course, reasons of such inaction are not explained.



<sup>39</sup> <http://www.eco.gov.kz/sotrudnichestvo/index.php>.

## Implementation of the Article 9

In section 30 (page 31), the report authors state that during hearings of lawsuits related to implementation of the Aarhus Convention provisions, “local courts, in general, apply legislative norms correctly.” But the authors do not support this conclusion with any prove.

Moreover, in section 28 (page 29), they write: “In order to provide unique interpretation and correct application of the environmental legislation by courts during hearings of civil cases in the area of environment, in 2013, it is planned to prepare a new edition of a normative statement of the Supreme Court “About practice of application of the legislation by courts in arguments related to the environment.”

From this, it can be concluded that the Supreme Court has to adopt a new normative statement, because the courts still lack of a unique interpretation and correct application of the environmental legislation. By stating that “the local courts, in general, apply legislative norms correctly,” the report authors embellish the real picture.

In section 29 (page 30), the authors correctly state: “Lack of a clear and specific processual procedure of determination of jurisdiction of civil cases initiated by ecological non-profit organizations sometimes leads to ungrounded denials by courts in accepting lawsuit statements.” Our experience shows that in the majority of the times, courts deny accepting lawsuit statements and only rarely accept the statements from the first time. One of the main reasons of these denials is the fact that judges manipulate the norms of the law, when determine jurisdiction of a case.

Based on the organization experience, it can be stated that courts often intentionally do not accept lawsuits from the public, which are pursuing state organs. In these cases, the courts dare to obvious violations of law. They return case materials, explaining it as if the jurisdiction was determined incorrectly. But the Civil Procedural Code (CPC) stipulates that if jurisdiction was determined incorrectly, the court must file the case to the proper court.<sup>40</sup>

During our many years of experience, there was not a single case when this article of the CPC was applied by the courts. As a result of determination of jurisdiction by the courts and accepting of a case for consideration, time frames stated by the laws are violated, long delays up to 9 months and more are taking place.

Lately, the courts more and more often do not accept statements from the public, as if the documents were made incorrectly. Procedure of filing a statement often takes many months. Meanwhile, illegal activity continues.

One more reason for denial of statements is a frivolous interpretation by judges of the provisions of the Convention and the national legislation. For

<sup>40</sup> CPC of the RK, article 36, paragraph 2, sub-paragraph 3.



example, on April 2, 2014, the public of the city of Almaty addressed the Medeu District Court of the city of Almaty with a lawsuit about acknowledging of the public hearings about allocation of a part of the lands of Ile-Alatau National Natural Park for construction of a mountain ski resort “Kok-Zhailau” to be invalid. On April 7, the judge denied to accept the statement by indicating: “that it cannot be reviewed and solved... because the public hearings and protocol appealed by the claimants do not cause any juridical consequences.” The judge ignored the provision of the first article of the Convention, which states that each party guarantees rights to access to information, public participation in decision-making process, and access to justice.

On sections 29 and 30, the authors devote unjustly too much space to description of seminars, round tables, conferences, probably, because they are not informed very well or are not willing to bring real examples of public access to justice.

In the report, they do not name a whole row of other obstacles which are facing the public during filing lawsuits to courts:

- the courts take out the state organs and Prosecutor’s Office from the list of defendants;
- representatives of the state organs-defendants do not show up to court hearings without any respected reasons, but judges do not take any measures to establish respect to a court. As a result, a case hearings is artificially delayed;
- the principle of equality of parties in a court process is violated;
- judges step out of lawsuit demands which violates interests of claimants;
- the principle of independence of judges is violated. During consideration of cases, they take advice from a curator of the higher instances;
- high level of corruption in state organs and courts causes real doubts in independence of judges and objectivity of adopted decisions. Even the judges caught in bribery stay at their positions or work as lawyers;
- judges have poor knowledge of the environmental legislation and international conventions. Incompetence of judges leads to delay of legal proceedings.

Finally, the report does not mention a word about implementation of court decisions made in favor of the public. This is one more serious problem of access to justice. For years, court decisions are not being executed.<sup>41</sup> Main reasons used are, usually, lack of money, change of leadership of the state organs, unclear distribution of authorities between state organs, and similar circumstances.

Statistics presented in section 30 (page 31) about lawsuit statements filed by public and non-profit organizations look very doubtful.

<sup>41</sup> Section 2. Implementation of court decisions:  
<http://www.greensalvation.org/index.php?page=iski2014>.

High cost of addressing to a court by citizens and public organizations is also a significant obstacle for realization of the rights. It is necessary to pay a state fee, pay for the services of a lawyer, which are extremely expensive in Kazakhstan. If a case is reviewed in a different city, it is necessary to pay for travel and accommodation expenses, as well. Besides, not always the legal costs are being reimbursed even after a court decision. Therefore, a person with an average income, practically, cannot afford filing a statement to a court because of the financial reasons.

### 3. Conclusion

After adoption of the Environmental Code in the beginning of 2007, the official organs stated many times that it meets all requirement of the Convention. In the report about adopted measures to implement decision II/5a prepared by the Ministry of Environmental Protection, it was mentioned: “In the Republic of Kazakhstan, there was created a political, legislative, and institutional base for active participation of the whole society in solving countrywide questions, including environmental ones. Thus, all conditions for the necessary provision of the access by all components of the Aarhus Convention are created in the republic.”<sup>42</sup> The optimistic conclusions were also contained in the report prepared for the Third Meetings of the Parties of the Aarhus Convention: “In the present time, in the Republic of Kazakhstan, at the legislative level, in general, there were created conditions for the required provision of the access by all components of the Convention...”<sup>43</sup>

In the report prepared for the Forth Meeting of the Parties, the authors express less optimism. They admitted some deficiencies of the Environmental Code and a number of other laws, contradictory of their provisions and other serious deficiencies contained in normative legal acts.

In the report for the Fifth Meeting of the Parties, even more gaps in the legislations are admitted. But despite of the fact that compare to the previous one, the last report is made in a more critical manner, no real steps are made by the MEWR and the government. Hiding of information and removal of citizens from the decision-making process create new and more acute conflict situations.

The report, obviously, has a predominantly large amount of information about conducting of different trainings, round tables, conferences. Meanwhile, there is practically no information about real actions of the public, about

<sup>42</sup> Report about measures undertaken to implement the decision II/5a “Compliance by Kazakhstan with its obligations under the Aarhus Convention”, p.18: <http://rudocs.exdat.com/docs/index-355499.html>.

<sup>43</sup> First National Aarhus Convention Implementation Report, p.26: <http://www.eco.gov.kz/sotrud-nichestvo/index.php>.

problems of access to information, about public hearings, sporadic data about access to legislation.

The authors of the report even do not try to analyze what the in compliance of the provisions of the Aarhus Convention has led to and what consequences can be expected in the future.

In our opinion, content of the reports prepared for the Third, Fourth, and Fifth Meetings of the Parties of the Aarhus Convention is an illustration of failure and incapability of the state to comply with the international obligations for many years.

1. In the present time, it can be said about a tough ecological heritage of the period of the independence. Thousands of people have to live in sanitary and protection zones, eat off-grade food. Fertile lands are being turned into dumpsters or being built on, forests are being clear cut, water bodies pollution is continuing, desertification process is accelerating.

2. Public right on access to information, decision-making process in the matters related to the environment, and access to justice are pronounced in Kazakhstan. But there are no mechanisms of their realization.

3. Understanding that execution of the above mentioned rights will mean development of democracy institutes in the country, the state authorities make everything to prevent it.

4. Another reason of in compliance with the Convention is an intentional weakening and destruction of the state apparatus by the dominating political groups. This is confirmed by the place of Kazakhstan in the Failed States Index.<sup>44</sup>

Thus, the present National Report does not give an objective picture of compliance with the Aarhus Convention in Kazakhstan. But its authors, obviously, are trying to improve the image of the country in the eyes of the international community.

Based on the above stated, we address to the Committee of the Fifth Meeting of the Parties of the Convention. We believe that they shall give an unbiased evaluation to compliance with the obligations taken by the parties. This is not a violation of sovereign rights of the Parties of the Convention. Otherwise, objectively, it is a silent support of a non-democratic regime. There should be developed measures of influence on the countries, which systematically do not comply with the international obligations, but not in the form of their exclusion from the list of the Parties of the Convention.

**The materials are prepared by: Svetlana Katorcha, Valeriy Krylov,  
Sergey Kuratov, Nataliya Medvedeva, Svetlana Spatar, Aleksandr Shitov  
Translated by Sofya Tairova**

<sup>44</sup> The Failed States Index 2013: <http://ffp.statesindex.org/rankings-2013-sortable>.

# Legal Proceedings of the Ecological Society Green Salvation in 2011-2013

## Legal proceedings of the Ecological Society Green Salvation for 2011 -2013

This material provides a brief summary of cases reviewed by courts under lawsuits of the Ecological Society Green Salvation (hereafter, ES) during 2011-2013 and analyzes typical violations of material and procedural law committed by courts. The legal practice of the society allows making a conclusion about violation of the main principles of the Article 9 of the Aarhus Convention. This article stipulates that each party provides any person an access to justice in the matters related to the environment, in the cases specified by the Convention.

### I. Brief summary of the cases

#### No.1

#### **Case on acknowledgment of a legal act – “Rules of conducting of public hearings” – to be contradictory to the laws of the Republic of Kazakhstan and the international agreement – Aarhus Convention.**

Adopted in 2007, “Rules of conducting of public hearings”, in many aspects, contradict to the requirements of the Aarhus Convention. The Ecological Society numerous times indicated that the rules do not allow the public to participate effectively in the decision-making process. But because of all our appeals to the state organs were ignored, the organization had to address a court.

The lawsuit in the interests of an undetermined group of people is filed on **February 2, 2011**, to the Specialized Interregional Economic Court (SIEC) of the Astana City.

#### Demands:

1. To acknowledge the “Rules of conducting of public hearings” adopted on May 7, 2007, by an order of the Minister of Environmental Protection of the Republic of Kazakhstan No.135-p, to be contradictory to the requirements of the Aarhus Convention, Environmental Code, and the Law “About Normative Legal Acts”, i.e. to be invalid in the full volume.
2. To require the Ministry of Justice of the Republic of Kazakhstan to cancel the registration of the “Rules of Conducting of Public Hearings.”

On **February 11**, the SIEC made a decision to leave the lawsuit without a movement, because supposedly, it had been filed incorrectly. The deadline

for correction of the mistakes was set as February 21. But the notification was sent by the court only on February 17, and was received by the Ecological Society on February 21.

Despite of this fact, on **February 22**, the SIEC made a determination to return the lawsuit to the claimants.

On **March 9**, based on an appeal of the Ecological Society, the Astana City Court re-set the deadline for appealing of the SIEC's decision about returning of the lawsuit.

On **April 2**, the case was filed again to the SIEC of Astana, in order to speed up the process of its consideration.

On **April 29**, the SIEC returned the lawsuit again explaining that the paperwork had been, supposedly, filed incorrectly.

On **August 15**, the lawsuit is filed to the SIEC of Astana for the third time.

On **September 12**, the SIEC made a determination about returning of the lawsuit because the paperwork had been, supposedly, filed incorrectly.

On **September 26**, a private claim on the determination of the SIEC is filed to the court of the city of Astana.

On **November 23**, the court of the city of Astana refused to satisfy the private claim.

On **December 14**, a petition is sent to the Supreme Court.

On **December 26**, the Supreme Court left the petition without a review.

On **January 16**, 2012, another petition is sent to the Supreme Court.

On **January 21**, The Supreme Court notified the ES in written that the petition was left without a consideration, because the court did not find that the determinations of the courts of the first and appeal instances were impeding the review process of the case.

**The statement was not accepted for consideration. The ES believes, this is a violation of the paragraph 4 of the Article 9 of the Aarhus Convention, because the public did not receive an access to justice.**

## No. 2

**Case on failure of the Ministry of Environmental Protection (MEP) to provide environmental information – the National Report about compliance with the Aarhus Convention and its discussion materials.**

**The ES believes that the MEP violated the paragraph 1 of the Article 4 of the Aarhus Convention.**

The lawsuit is filed to the SIEC of Astana city on **February 15, 2011**.

### Demands:

1. To acknowledge the actions of the Ministry of Environmental Protection, which did not provide information to the Ecological Society Green Salvation, to be inaction, which violates the rights and lawful interests of the juridical person.

2. To require the MEP to provide the Ecological Society Green Salvation with the information, in particular:

- how was the report discussed with the public;
- where and when did “round tables” take place;
- what kind of comments were received from the public;
- how were they considered;
- when was the report sent to the Secretariat of the Convention;
- where could one get acquainted with the final version of the report?

In March-April, several court hearings took place.

On **April 25**, the court made a judgment by default and satisfied the demands of the Ecological Society Green Salvation.

**The judgment came into force, the Ministry provided the information.**

**The court’s decision was executed only partially, as the state duty was not reimbursed.**

### No. 3

**Case on failure of the Akim of Almaty City to provide information about relocation of people from a sanitary and protection zone of an enterprise “Tsentr beton” Ltd.**

**The ES believes that the akimat violated the paragraph 1 of the Article 4 of the Aarhus Convention.**

The lawsuit in the interests of the residents of the city of Almaty is filed to the Court No.2 of Bostandykski District of Almaty City on **March 1, 2011**.

#### Demands:

1. To acknowledge the actions of the Akim of Almaty City, who did not reply in the essence to the request sent to him on December 22, 2010, to be inaction which violates the rights and lawful interests of the citizens.

2. To require the Akim of Almaty City to reply in the essence of the request, i.e. about the solution of the issue of relocation from the sanitary and protection zone of the “Tsentr beton” Ltd.

In **March-April**, several court hearings took place.

On **April 21**, the court refused to satisfy the lawsuit demands.

On **April 26**, an appeal is filed to the Appellate Board on Civic Affairs of the Almaty City Court.

On **May 24**, the appeal was not satisfied.

A decision was made not to file a cassation appeal.

On **August 17**, a petition is sent to the Supreme Court.

On **November 17**, at the preliminary hearing of the case, the Review Board of the Supreme Court refused to satisfy the petition.

On **December 7**, a letter with a request to issue an objection on the decision of the Supreme Court is sent to the General Prosecutor’s Office.

The claimant's demands were not satisfied, the information was not provided.

#### No. 4

##### **Case on inaction of the organs of public administration, which caused formation of an illegal dump site in Panfilov village, Talgar District, Almaty Oblast.**

The lawsuit in the interests of the residents of Panfilov village is filed on **September 16, 2011**, to the Court of the city of Talgar.

##### Demands:

1. To acknowledge the failure of the defendants – Akimat of the village and other authorized state organs – to fulfill their direct responsibilities in providing environmental and sanitary and epidemiological well-being of the residents of Panfilov village to be illegal, i.e. inaction.

2. To require the defendants to take immediate actions, in order to liquidate the dump site, demolish the abandoned buildings, and bring the land sites into a proper condition, in accordance with the legislation.

On **September 21**, the court made a statement to leave the case without a motion.

On **September 29**, a reply to the statement and a letter to the chairman of the court were filed.

On **October 25**, the court made a determination to leave the case without a motion.

On **November 2**, a reply to the determination of the court is filed.

On **November 7**, by twisting the claimant's demands, the court made a decision to return the case.

On **December 21**, a private complaint is filed to the Almaty Oblast Court.

On **February 1, 2012**, the court made a determination to leave the complaint without satisfaction, saying that the Ecological Society Green Salvation, supposedly, did not present a document confirming its right to protect interests of the citizens in court. The judge did not get acquainted with the by-laws of the organization.

**The statement was not accepted for consideration. The ES believes that this is a violation of the paragraph 4 of the Article 9 of the Aarhus Convention, because the public did not receive an access to justice.**

#### No. 5

##### **Case about inaction of the Akim of the city of Almaty, which caused discrimination of citizens residing on Bokeykhanov street, Almaty.**

The lawsuit in the interests of the residents of Almaty is filed to the Court of Bostandyk District of the city of Almaty on **November 23, 2011**.



Demands:

1. To acknowledge the failure of the Akim of Almaty to carry out his professional responsibilities, and also his failure to comply with the national and international agreements, which has lead to discrimination by a place of residence of the citizens living on Bokeykhanov street, city of Almaty, to be inaction.

2. To acknowledge the lack of control allowed by the Akim of the city of Almaty over the authorized organs who violated the national legislation which prohibits people from living in sanitary and protection zones of enterprises, in particular, the residents of Bokaykhanov street, Almaty, to be illegal inaction.

3. Following the paragraph 1 of the Article 282 of the Civil Procedural Code (CPC), to require Akim of the city of Almaty to liquidate the violations of the legislation in respect of the residents of Bokeykhanov street by their resettlement from the sanitary and protection zone and providing them with adequate dwelling, in accordance with the current legislation.

On **November 25**, the court made a determination about leaving the case without any further consideration.

On **December 9**, the court made a determination about returning the case. The ES received the documents only on December 23, after an appeal deadline had passed.

On **December 28**, a private complaint on determination of the Bostandyk District Court is submitted to the Almaty City Court.

On **January 27, 2012**, the Bostandyk District Court made a decision about returning of the private complaint, because, supposedly, the appealing deadline had past and there was not any statement about re-establishing the appeal period.

**The lawsuit was not accepted for consideration.**

**The statement was not accepted for consideration. The ES believes that this is a violation of the paragraph 4 of the Article 9 of the Aarhus Convention, because the public did not receive an access to justice.**

## No. 6

**Case about acknowledging of a normative legal act – “Rules of conducting of public hearings” – to be contradictory to the laws of the Republic of Kazakhstan and international agreement – Aarhus Convention.**

**Due to the fact that the active rules violated rights of the citizens, in particular, the people living on Bokeykhanov street of the city of Almaty, on participation in decision-making process, the ES supported their lawsuit.**

The lawsuit is filed on **April 9, 2012**, in the interests of residents of Bokeykhanov street, city of Almaty, to the Essil District Court of Astana City.

**Demands:**

1. To acknowledge the “Rules of conducting of public hearings”, signed on May 7, 2007, by a decree of the Minister of Environmental Protection, No.135-p, to be contradictory to the requirements of the Aarhus Convention, Environmental Code, and Law “About normative legal acts”, i.e. invalid in the full extent.

2. To oblige the Ministry of Justice to cancel registration of the “Rules of conducting of public hearings.”

On **April 16**, the court made a determination about leaving the lawsuit without consideration, supposedly, because of improper execution of the papers, in particular: because of a lack of an indication of a source where the Rules had been published.

On **May 29**, after the judge’s re-insight with the claim, the case was accepted for a legal proceeding.

On **June 26**, the court made a decision to refuse to satisfy the lawsuit demands, explaining it by a lack of a matter of dispute, because during the case proceedings, the Ministry introduced amendments to the Rules. These amendments did not eliminate contradictions between the “Rules of conducting of public hearings” and the Aarhus Convention.

On **July 30**, an appeal was submitted to the Astana City Court.

On **September 17**, the court agreed with the reasons of the court of the first instance and recognized the decision to be lawful.

On **October 22**, a cassation appeal was submitted to the Astana City Court.

On **December 4**, the cassation board acknowledged that:

- the Essyl District Court of the city of Astana did not consider the case within the ten-day period which was a violation of the p.2 article 284 of the Civil Procedural Code of the Republic of Kazakhstan;

- “conclusions of the court about the lack of a matter of dispute are baseless”;

- “the court did not review the matter about compliance of the indicated (in the claim – Editor’s note) provisions of the Rules with the requirements of the laws of the Republic of Kazakhstan in the essence.”

The cassation board cancelled the decision of the Essyl District Court of Astana City and the statement of the appeal board of the Astana City Court, and sent the case for re-consideration to the court of the first instance with a different composition of the court.

On **February 5, 2013**, court hearings took place in the Essyl District Court of Astana City. The court denied in satisfaction of the lawsuit demands allowing a loose interpretation of the Aarhus Convention, in violation of the

Articles 11, 26, 27, 31, and 32 of the Vienna Convention on the Law of Treaties which was joined by Kazakhstan on March 31, 1993.

On **February 18**, an appeal to the decision of the Essyl District Court of Astana City was filed to the appeal board of the Astana City Court.

On **February 28**, the prosecutor of Essyl District issued a protest against the decision of the court. The prosecutor asked the board to satisfy the claimant's demands, as the judge violated material and procedural law when taking the decision.

On **March 12**, the appeal's review was postponed, as the defendants' representatives and the prosecutor were not prepared. As a result, the claimant sustained additional court expenses (travel costs to the board hearings in Astana and back).

On **March 19**, the appeal board of the Astana City court denied satisfying the claim without taking into consideration the conclusions of the cassation board dated on December 4, 2012, and without satisfying the protest of the prosecutor of the Essyl District.

On **June 27**, a cassation appeal on the determination of the appeal board was sent to the Astana City Court.

On **July 18**, the appeal was returned without consideration as if a fifteen-day period of time for it to be filed was missed.

On **July 29**, claimants submitted a petition to the Civil Affairs Review Board of the Supreme Court about cancellation of the decision of the Yessil District Court of the city of Astana and the determination of the Appeal Board of the Astana City Court.

On **August 22**, the Review Board made a determination that the Astana City Court returned the cassation appeal to the claimants without a basis, as the court did not take into consideration amendments introduced to the Civil Procedural Code on February 17, 2012.

On **September 6**, the second cassation appeal on the decision of the Yessil District Court of the city of Astana and the determination of the Appeal Board of the Astana City Court is filed to the Astana City Court.

On **October 22**, for the second time, the Cassation Board denied to satisfy the complaint, as if "a lack of necessary proves" and "incorrect interpreting of the legislative norms."

On **November 7**, the claimants addressed the Review Board on Civil Rights of the Supreme Court with a petition against the statement of the Cassation Board of the Astana City Court.

On **December 23**, at a preliminary meeting, the Review Board on Civil Rights of the Supreme Court made a statement about initiating a review proceeding.

On **February 4, 2014**, the Board made a statement about leaving the

petition without a satisfaction. The Board did not find violations of material and procedural law and came to a conclusion that the Rules were brought into compliance with the requirements of the Aarhus Convention. It was not taken into consideration that the amendments into the Rules were introduced after the public address to the court, and that some of the amendments had been suggested by the claimants. The judges were not embarrassed by the fact that in December 2013, in the National Report on Compliance with the Aarhus Convention prepared for the Fifth Meeting of the Parties of the Convention, the Ministry of the Environment and Water Resources admitted that the new edition of the Rules “does not exclude a possibility of conducting of the public hearings just as a formality without necessary thorough accountability of all possible consequences of a planned economic activity, i.e. basic principles of the EIA.”

**The case remains open.**

#### **No. 7**

**Case about failure to provide environmental information by the Department of Land Relations and the Department of Architecture and Urban Planning of Karasai district, Almaty oblast.**

**The ES believes that the state officials violated the paragraph 1 of the Article 4 of the Aarhus Convention.**

The lawsuit in the interests of the residents of the village Irgeli was filed on **May 8, 2012**, to the Karasai District Court, Almaty oblast.

#### **Demands:**

1. To acknowledge actions of the Department of Land Relations and Department of Architecture and Urban Planning that did not provide the Ecological Society Green Salvation with the requested information to be inaction which violates rights and lawful interests of the legal person.
2. To require to provide the information.

On **May 15**, the court made a determination about returning the case, as if the process of the pre-judicial dispute resolution were not complied.

On **June 11**, the ES sent a request to the court regarding the court's determination about returning of the lawsuit which had never been received by the ES.

The case materials were returned to the claimant only on **July 26** after a representative of the organization addressed the chairman of the Karasai District Court, Almaty oblast.

On **August 2**, a private complaint was submitted to the Almaty Oblast Court.

On **August 28**, the court cancelled the determination of the Karasai

District Court of Almaty oblast, and sent the case to the same court for re-consideration of the claim from the beginning point.

On **September 11**, based on the information received from the judge's secretary, supposedly, there was a determination made to return the case because of lack of jurisdiction to this court.

On **October 20**, the case was returned to the claimant without the court's determination about returning the case.

On **November 2**, a representative of the ES addressed the Chairman of the Court regarding the failure to provide the determination. The Chairman made arrangements to sent out the determination to the claimant.

On **November 27**, the determination was received.

On **December 4**, an appeal is submitted to the Specialized Interregional Economic Court of Almaty Oblast.

On **December 11**, the court made a determination about returning the appeal, explaining that it had been submitted by an unauthorized person and that the court lacked a jurisdiction. The determination indicates that the appeal was, supposedly, executed incorrectly, and lacked documents confirming the claimant's demands. "From the content of the text of the appeal and its resolute part, it is impossible to understand what the violations of the state authorities are."

Besides, the determination indicated that the ES – is a public organization, which purpose is to "facilitate improvement of social and economic (in the Charter – "social and ecological" – editor's note) situation of the Republic of Kazakhstan. Territory of activity was determined as the city of Almaty. ... The claimant litigates the actions of the state authorities of the Almaty oblast, not the city of Almaty."

The court discriminates the ES violating the p.9, article 3 of the Aarhus Convention which states: "Within the scope of the relevant provisions of this Convention, the public shall have access to information, have the possibility to participate in decision making and have access to justice in environmental matters without discrimination as to citizenship, nationality or domicile and, in the case of a legal person, without discrimination as to where it has its registered seat or an effective centre of its activities."

On **December 24**, private complaint was submitted to the Almaty Oblast Court.

On **February 12, 2013**, the appeal board cancelled the determination of the Specialized Interregional Economic Court (SIEC) of Almaty oblast dated on **December 11, 2012**, and sent the case to the same court to be reviewed starting from the point of acceptance to the proceeding.

On **March 27**, the SIEC of Almaty oblast made a decision in absentia about satisfaction of the claimant's demands.

On **April 17**, based on the statement of the Head of the Department of Architecture and Urban Development about cancellation of the decision in absentia dated on March 27, the court cancelled it and re-started reviewing the case.

On **May 16**, for the second time, the SIEC made a decision about satisfaction of the claimant's demands. The court admitted that the actions of the Department of Land Relations and Department of Architecture and Urban Development were illegal and obliged them to provide the information.

On **June 10**, the court decision came into a legal force.

**The court's decision is not being implemented.**

### **No. 8**

#### **Case about failure to provide environmental information by the Department of the Committee of the State Sanitary and Epidemiological Control of the Ministry of Health in the city of Almaty.**

**The ES believe that the state organ violated the paragraph 1 of the Article 4 of the Aarhus Convention.**

The lawsuit in the interests of the residents of Bokeykhanov street is filed on **June 6, 2012**, to the Specialized Interregional Economic Court of the City of Almaty.

#### **Demands:**

1. To acknowledge the actions of the Department that did not provide the requested information to the Ecological Society Green Salvation to be inaction which violates rights and lawful interests of the juridical person.

2. To require the Department to provide the information, specifically: a copy of the project of reduction of the sanitary and protection zone (SPZ) for the enterprise "TsentrObeton" Ltd.; a document justifying alteration of the category of sanitary threat of the enterprise; a copy of the minutes of public hearings on the project of reduction of the SPZ for the enterprises including a list of the participants.

On **June 13**, the court made a determination about returning of the case objecting the court's jurisdiction.

On **June 25**, a private complaint was filed to the Almaty City Court.

On **July 17**, in violation of the paragraph 1, article 280 of the Civil Procedural Code of the Republic of Kazakhstan, the court returned the private complaint, as if the determination's appealing period had passed.

On **July 30**, a request to accept the complaint for a review was sent to the chairman of the Almaty City Court.

On **August 10**, the chairman of the Almaty City Court informed that he did not find any violations of the procedural norms by the judge.

On **September 10**, a letter was sent to the chairman of the Supreme Court requesting to review the claim of the Ecological Society Green Salvation and to oblige the chairman of the Almaty City Court to consider the claim of the citizens per se.

On **September 26**, the letter of the ES sent to the Supreme Court was answered by the chairman of the Almaty City Court. The answer said that the judges did not commit any procedural violations.

Manipulating with the provisions of the Civil Procedural Code of the Republic of Kazakhstan, the court did not accept the claim for consideration, in violation of the p. 1 and 2, article 9 of the Aarhus Convention, which created obstacles to access justice in the matter of providing information and failure to act by the public authorities.

**The case was not accepted for consideration.**

### **No. 9**

#### **Case about failure to act by authorities which led to formation of an illegal dumpster in Panfilov village, Talgar district, Almaty oblast.**

Lawsuit in the interests of the residents of Panfilov village is filed on **June 19, 2012**, to the Court of the city of Talgar.

#### **Demands:**

1. To acknowledge failure of the authorities to perform their direct responsibilities in providing environmental and sanitary and epidemiological welfare of the village to be illegal, i.e. inaction.

2. To require the authorities in the limits of their powers to take immediate actions to normalize the environmental and sanitary and epidemiological conditions in the village.

On **June 29**, the court made a determination about leaving the case without a progress, as if the papers were improperly executed. In violation of the p.1, article 222 of the Civil Procedural Code of the Republic of Kazakhstan, the court indicated that “the court does not have a right to instruct a state authority to make a specific action.”

On **July 17**, the claim was re-submitted to the Talgar City Court without any changes in the demands.

On **August 6**, the case hearings began.

On **August 28**, the court made a decision to partially satisfy the demands. The decision admitted the fact of failure to act by the akim (mayor) of Panfilov village of Talgar district. It was indicated that he must take measures to restore the normal ecological and sanitary and epidemiological conditions in the village.

In the end of **September**, the akim of Panfilov village submitted an appeal



to the Almaty Oblast Court, claiming that the court, supposedly, accepted the claim of the ES illegally and without a basis, because the citizens were not members of the ES.

On **October 30**, the appeal board of the Almaty Oblast Court denied satisfying the akim's claim leaving the court's decision without any changes. The defendant has a right to appeal against the decision during a six months period.

The court's decision came in force.

**The court's decision is not being implemented.**

### **No. 10**

#### **Case about failure to act by the akim of Almaty which led to discrimination of the citizens residing on Bokeykhanov street, city of Almaty.**

Due to the continuing discrimination, the people with a support of the ES addressed a court again.

Lawsuit in the interests of the residents of Bokeykhanov street is filed on **June 26, 2012**, to the Court of Zhetysay district, city of Almaty.

#### **Demands:**

1. To acknowledge the failure of the akim of Almaty to perform his administrative duties in implementation of the General Plan of the city development, and also his inobservance with the Constitution, requirements of the Environmental Code, Law "About architectural, urban planning, and civil engineering activity in the Republic of Kazakhstan", international agreement – Aarhus Convention, International Pact about civil and political rights and other international agreements, which led to discrimination of the residents of Bokeykhanov street based on their place of residence and other circumstances, to be illegal, i.e. inaction.

2. To acknowledge the failure of the akim of Zhetysay district of the city of Almaty to perform his administrative duties during capital repairs of Bokeykhanov street which led to discrimination of the residents based on their place of residence and other circumstances, to be illegal, i.e. inaction.

3. To require the akim of the city of Almaty to eliminate the violations of the Constitution by resettling the people from the limits of a sanitary and protection zone and providing them with adequate housing, in accordance with the current legislation.

Court hearings on the case started on **July 23**.

On **September 5**, after several court hearings, the court denied satisfying the demands, as if no violations of law or citizens' rights were committed by the executive authorities.

On **October 3**, 28 days after the decision was made and after several complaints on the actions of the judge, the decision was received.

On **October 15**, an appeal was submitted to the Almaty City Court.

On **December 20**, the appeal board of the Almaty City Court denied satisfying the claim.

On **March 15, 2013**, a cassation appeal was filed to the Almaty City Court.

On **April 5**, the cassation board of the Almaty City Court denied satisfying the claim.

During the hearings, the Head of the board (alias Head of the Almaty City Court) allowed himself unethical expressions towards the claimants. In this regard, on April 15, a claim was filed to the Court Ethics Commission of the branch office of the Supreme Court's Union of Judges. The later forwarded the claim to the Court Ethics Commission of the Almaty City Court. This is a violation of the sub-paragraph 2, paragraph 2, article 15 of the Law "About Administrative procedures" and sub-paragraph 6, paragraph 2, article 15 of the Law "About the order of reviewing statements from natural and legal persons." On April 25, the Court Ethics Commission of the Almaty City Court reviewed the claim but did not find any violations of the norms of the Court Ethics Code.

On **June 14**, a petition against the determination of the Cassation Board of the Almaty City Court was filed to the Civil Affairs Review Board of the Supreme Court.

On **June 26**, the Supreme Court returned the petition because originals of power of attorneys were not presented.

On **July 22**, the petition was filed to the Supreme Court for the second time.

On **September 12**, the Review Board denied to initiate a review procedure because, in the judges' opinion, there was no basis to review the court acts.

**The claimants' demands were left without satisfaction.**

**The ES believes that this is a violation of the paragraph 4 of the Article 9 of the Aarhus Convention, because no just and unbiased review process was established, and no access to adequate and effective remedies of legal protection was provided.**

## No. 11

**Case about failure to act by the director of the Department of the Committee of the State Sanitary and Epidemiological Control of the city of Almaty (DCSSEC) which was expressed in a lack of control over marking of sanitary and protection zones by special signs in the area.**

The lawsuit in the interests of the citizens residing on Bokeikhanov Street is submitted on **October 17, 2012**, to the Medeu District Court of the city of Almaty.

Demands:

1. To acknowledge the failure to act by the authority – director of the Department – the failure to implement the sanitary and epidemiological control over establishing and marking of sanitary and protection zones and gaps by special signs on the area.
2. To oblige the authority – director of the Department – take measures to implement the norms of the Land Code, in the part of control over marking up territory with special signs which indicate sanitary and protection zones and gaps.

On **October 22**, the court made a determination about leaving the case without a progress, as if the papers were improperly executed, in particular: “It was not indicated based on which normative legal acts the director of the department of the CSSEC must mark up the territory with special signs indicating sanitary and protection zones and gaps.”

On **October 31**, a reply about unlawfulness of leaving the case without a progress was sent to the court.

On **November 14**, the court hearings on the case began.

From **December 5** to 26, several court hearings took place.

On **December 26**, the court made a decision to deny in satisfaction of the claimants’ demands.

On **January 25**, a claim against the decision of the judge of Medeu District Court of Almaty City dated on December 26, 2012, was filed to the appeal board of the Almaty City Court.

On **March 1, 2013**, the review of the appeal was delayed because the defendant’s representative was not prepared.

On **March 18**, the appeal board of Almaty City Court denied satisfying the claim.

During review of the claim, the judges agreed with the conclusions of the judge of the district court, who:

- in violation of the article 192 of the Civil Procedural Code of the RK, did not review the case in its essence;
- exceeded the case demands, in violation of the paragraph 2, article 219 of the Civil Procedural Code of the RK, by reviewing matters not agreed by the claimants, and did not determine an appropriate defendant, in violation of the paragraph 3, article 170 of the Civil Procedural Code of the RK;
- ignored the fact that, in violation of the paragraph 4, article 165 of the Environmental Code of the RK and paragraph 5, article 4 of the Aarhus Convention, the defendant did not present information about a state organ which controls the process of marking the territory with signs of sanitary protection zones and gaps.

On **May 30**, a cassation appeal was filed to the Almaty City Court.

On **July 2**, the Cassation Board of the Almaty City Court denied in satisfaction of the claim. The claimants sent a petition about objection of the Head of the board (alias Head of the Almaty City Court) because of his unethical expressions towards them during consideration of a cassation appeal for another case. The petition about objection was not satisfied.

Prosecutor, who was present at the hearings, did not protest the above mentioned violations of the procedural and material law.

On **August 8**, the claimants filed a petition against the determination of the cassation board of the Almaty City Court to the Civil Affairs Review Board of the Supreme Court.

On **September 5**, the Review Board began reviewing the claim, but because of the complexity of the matter decided to request all materials on the case for studying.

On **October 24**, at the preliminary hearings, the Review Board of the Supreme Court decided to initiate a review procedure.

On **November 27**, the Review Board made a statement:

- the decision of the Medeu District Court of the City of Almaty dated on December 26, 2012, statement of the Appeal Board on Civil and Administrative Affairs of the Almaty City Court dated on March 18, 2013, and the statement of the cassation court board of the Almaty City Court dated on July 2, 2013, related to this case shall be cancelled and new decision about satisfaction of the lawsuit shall be adopted;
- to acknowledge the failure of the authority to provide a control over establishing and marking of the sanitary and protection zones with special signs on-site to be inaction;
- to oblige the authority to take measures, in order to exercise the control.

**The decision is not implemented.**

**The Supreme Court admitted violation of the paragraph 5 of the Article 4 of the Aarhus Convention, but the reviewing process of the case continued for 13 months.**

## No. 12

**Case about a failure to act by the Ministry of Environmental Protection and vice-minister of Environmental Protection about failure to comply with their responsibilities of efficient utilization of the state property for the public good and responsibilities to conduct control over integrity of the property of the Republic's legal person – Ile-Alatau State National Natural Park.**

The lawsuit in the public interests was filed on **June 3, 2013**, to the Specialized Interregional Economic Court (SIEC) of the City of Astana.

Demands:

1. To acknowledge failure of the Ministry of Environmental Protection to comply with its direct responsibilities of efficient utilization of the state property for the public good and to conduct control over integrity of the property of the Republic's legal person – Ile-Alatau State National Natural Park, to be inaction.

2. To oblige the Ministry of Environmental Protection to undertake measures to prevent construction of the new mountain ski resort “Kokzhailau” on the territory of the national park, in order to efficiently utilize the state property for the public good.

On **July 5**, the statement was returned as if of lack of jurisdiction to this court.

On **July 22**, after several amendments to the statement were made, it was filed to the SIEC of the City of Astana again.

On **July 30**, the statement was returned again, as if of lack of jurisdiction to this court.

On **August 14**, the case is submitted to the Yessil District court of the City of Astana.

On **August 26**, the case is left without a movement till September 9, as if the paperwork was done incorrectly: it was not indicated which actions were disputed, which rights and freedoms of the claimant were violated, and the fee was not paid.

The determination dated on August 26 was sent from Astana on September 3, arrived to the city of Almaty on **September 9**. Of course, the claimant could not meet all the requirements before the indicated date, without being informed in time.

On **September 10**, the judge of the Yessil District Court made a determination about leaving the case without consideration and about returning it to the claimant.

On **September 11**, a representative of the Ecological Society Green Salvation, who was in Astana at that time, asked the judge's secretary for the determination and the case materials. The secretary replied that the determination had not been signed by the judge yet, and that the materials would be sent right after its signing.

On **October 17**, after numerous persistent demands of the claimant to return the statement and the case materials, they were sent to the claimant and received on October 21. As a result of violation of the norms of the Civil Procedural Code by the court officials, the period of appeal of the determination dated on September 10 had past.

On **October 28**, a private complaint over actions of the judge of the Yessil District Court is sent to the Head of the Civil Affaires Appeal Board of the City

of Astana. The ES asked to renew the period of appeal of the determination dated on September 10 and to cancel it as illegally made.

On **December 10**, the Appeal Board denied in satisfaction of the private complaint, as if the ES had not paid the state fees and had not presented documents proving the facts stated in the complaint.

The Appeal Board did not consider a question of the ES about violation by the court employees of the norms of the CPC which resulted in missing of the appealing deadline for the determination dated on September 10.

**The case remains open.**

**The ES believes that the courts violated the paragraph 2 of the Article 9 of the Aarhus Convention, because the public did not receive an access to a review procedure before a court concerning the inaction by the state officials.**

### No. 13

**Case about acknowledging of the conclusion of the state environmental assessment – preliminary Environmental Impact Assessment of the project of mountain ski resort “Kokzhailau” – to be invalid.**

The lawsuit in public interests was filed on **October 7, 2013**, to the Specialized Interregional Economic Court of the City of Almaty.

Demand:

To acknowledge the conclusion of the state environmental assessment of the preliminary Environmental Impact Assessment of the feasibility study of the project of mountain ski resort “Kokzhailau” dated on April 13, 2013, conducted by the Department of Natural Resources and Nature Management Regulation of the City of Almaty - to be invalid.

On **November 11**, a court hearings took place.

From **November 15 to 25**, there were several court meetings.

On **November 25**, the court denied in satisfaction of the lawsuit. The court made this decision without providing an explanation.

On **December 12**, an appeal on the SIEC’s decision was filed to the Almaty City Court.

**The case remains open.**

### No. 14

**Case about acknowledging the conclusion of the state environmental assessment to be invalid and about stopping the enterprise’s activity.**

**The ES believes that the paragraphs 2, 3, 4, and 8 of the Article 6 of the Aarhus Convention were violated.**

The lawsuit in the interest of residents of Velikolukskaya street is filed on **November 4, 2013**, to the Specialized Interregional Court of the City of Almaty.

Demands:

1. To acknowledge the conclusion of the state environmental assessment on the project – “Environmental Impact Assessment” of a production workshop for manufacturing of external advertisement – to be invalid.

2. To oblige the Department of Natural Resources and Nature Management Regulation of the City of Almaty to recall the issued conclusion and to ban the enterprise’s activity which causes a negative impact on the environment and the residents’ health.

On **November 8**, the SIEC declined the lawsuit, explaining it by a lack of jurisdiction.

On **November 21**, a statement was filed to the Medeu District Court of the city of Almaty.

On **December 30**, the court hearings took place.

**The case remains open.**

***Rights and legal interests of the Ecological Society “Green Salvation” are defended in court by lawyer Svetlana Philippovna Katorcha.***

## **II. Violations of the Aarhus Convention and obstacles for access to justice demonstrated by our experience in courts**

Judicial practice of the ES allows discovering numerous violations of the material and procedural law by the courts and also obstacles for access to justice.

Below are the most typical violations of the material and procedural law by the courts.

1. Courts are still under control of executive organs. By the opinion of the European Bank of Reconstruction and Development in Kazakhstan, “in practice, however, the independence of the judiciary is constrained by the influence of the executive, and corruption is evident throughout the judicial system. The judiciary’s inadequate level of independence undermines their ability to exercise an oversight of the executive... A major problem affecting the success of the anti-corruption efforts is the lack of independence of the judiciary.”<sup>1</sup>

2. Courts of all levels avoid acknowledging violations of human rights by the state officials even when the latter admit it themselves. Example: the Supreme Court denied the ES to satisfy demands on acknowledging the Rules about conducting of public hearings to be invalid and contradictory to the

<sup>1</sup> Strategy for Kazakhstan. European Bank for Reconstruction and Development: <http://www.ebrd.com/downloads/country/strategy/kazakhstan-strategy-2013.pdf>, December 17, 2013, p.34, 35.



Aarhus Convention (see the case No.1). At the same time, in the National Report presented by the Republic of Kazakhstan to the Fifth Meeting of the Parties of the Aarhus Convention, it is admitted that the new edition of the Rules, as well, “does not exclude possibility of conducting of public hearings just as a formality” (see the case No.1, 6).

In March 2014, the MEWR decided to introduce amendments to the Rules and discuss them with the public beforehand. But this, the public officials acknowledges the discrepancy of the Rules with the requirements of the Aarhus Convention and national legislation, but trying to save the face, the court declined all arguments of the claimants.

3. Lawsuits are not review within the timeframes specified by the CPC (we believe, that none of the lawsuits described above was reviewed within the timeframes stipulated by the law).

4. Even if decisions are made in favor of the public, they are not executed for years. The main excuses, usually, are: lack of money, change of leadership in the state organs, unclear division of authorities between state officials.

5. When reviewing the statements, judges exceed lawsuit demands in violation of the CPC (see the case No.11).

6. Under any excuse, judges try not to accept statements from the public. The most popular excuses are incorrect execution of papers (see the cases No.1, 4, 5, 6, 9, 11) and incorrect determination of jurisdiction (see the cases No.7, 8, 12, 14).

7. Courts interpret the legislation at their own will, and in the majority of cases, ignore arguments of claimants.

8. Courts, practically, do not base their decisions on international conventions ratified by Kazakhstan.

9. In the majority of cases, courts take the side of businessmen, despite of their obvious violations of the environmental legislation.

10. Organs of the Prosecutor’s Office, practically, do not “execute control over respect for rights and freedoms of a human and citizen.”

**The materials are prepared by: Svetlana Katorcha, Sergey Kuratov,  
Nataliya Medvedeva, Svetlana Spatar  
Translated by Sofya Tairova**

## Evolution of the Environmental Legislation of the Republic of Kazakhstan.<sup>1</sup> Chronology

In the evolution of the Republic of Kazakhstan's environmental protection legislation, it is possible to clearly identify a few periods that have been defined by changes in the country's political and socioeconomic situation.

### 1991 - 1994

The development of legislation was influenced by the inertia of the democratic tendencies of perestroika, the deteriorating socioeconomic situation, and the aspirations of the young government to renounce a raw materials economy and create the image of a country oriented towards democratic values. The environmental situation improved a little as a result of a drop in industrial production and a decline in agriculture.

The legal situation:

- the human right to a favorable environment was secured in the Republic of Kazakhstan's Constitution in 1993;
- attempts were made to develop a state environmental policy;
- ownership of natural resources was secured for the country's highest representative legal body;
- there was "a 'turn away' from the narrow, departmentally-based resource legislation towards environmental legislation";<sup>2</sup>
- a specialized body for environmental protection was created, with the functions of a state oversight control body;
- the right of the public to participate in the resolution of issues related to the environment was acknowledged;
- economic mechanisms for the rational use of nature began to be formulated;
- a series of international environmental protection conventions were signed.

### 1995 - Early 2003

This period saw a relative improvement in the economic situation. The basis of the country's economic growth was the intensive exploitation of natural resources. As a result of the de facto looting of state property and the signing of contracts with transnational resource exploitation companies, well-to-do clans and groupings formed. The political sphere saw a gradual return to a command/administrative method of management.

<sup>1</sup> Legal Reference System "Yurist": [www.zakon.kz](http://www.zakon.kz) as of January 17, 2014. These materials encompass only primary normative legal acts.

<sup>2</sup> D.L.Baideldinov. Environmental Legislation of the Republic of Kazakhstan. Almaty, 1995, p.53.

The environmental situation again deteriorated as a result of the growth in industrial enterprises and massive violations of environmental protection legislation.

The legal situation:

- provisions regarding the human right to a favorable environment were not included in the Constitution of 1995, which replaced the 1993 version;
- the Parliament's role in the resolution of environmental problems was reduced to legislative activities;
- the ownership rights to natural resources were, in effect, transferred to the executive bodies of power;
- legislation began to be eased in favor of natural resource users;
- there were massive violations of public rights as a result of imperfections in and a lack of compliance with the laws;
- there were limits placed on the authority of the specialized body on environmental protection and a deprivation of its functions as a state oversight control body;
- mechanisms for the rational use of nature were transformed and relegated to an adjunct of the fiscal system;
- international obligations were neglected, accompanied by declarations regarding the incorporation of international legal norms in national legislation.

### **2003 - First Half of 2007**

This period saw the relative stabilization of the economy, in great measure predetermined by the sharp rise in the price of oil on the global market. The ruling elite ignored the symptoms of impending crisis and began to redistribute the ownership of natural resources, particularly land. A bureaucratic, corrupt state continued to form in the political sphere, but more and more the clans, which were gaining strength, came out from under the influence of the center. The state aimed to get the "green" movement under control. The environmental situation continued to deteriorate.

The legal situation:

- despite being updated, the acting legislation became less effective than in 1991;
- legislation continued to be eased in favor of natural resource users;
- environmental protection bodies were transformed and almost entirely subjugated by the executive powers;
- massive violations of the public right to participate in the resolution of environmental problems occurred as a result of the lack of improvements to and compliance with the laws;
- mechanisms for rational nature use were finally destroyed;
- environmental protection legislation was used to exert pressure on transnational companies in order to redistribute profits;

- disinformation of the public became stronger in regards to the role of public in the resolution of environmental problems;
- attempts were made to use legal methods to get the “green” movement under control;
- the requirements of international agreements were blatantly ignored, raising the question as to whether the Republic of Kazakhstan must withdraw from a number of environmental conventions.

### **The Second Half of 2007 - Early 2014**

The mirage of economic and political stability faded away. The crisis in the economy impacted all aspects of life. The inflation level remained high. The clans led an open fight against the authorities. The public’s political activity increased. The government was maneuvering, trying to control the situation. The “green” party created after the transformation of one of the officially registered parties tried to unite non-governmental environmental organizations and enter into coalition with the European “green” parties. Many representatives of the international community displayed concern about the political situation in the country; nevertheless, Kazakhstan was granted chairmanship of the OSCE.

The legal situation:

- environmental legislation was used to fight political opponents;
- laws were tailored to suit the specific interests of industrial groups;
- acting legislation was used in order to enrich bureaucrats;
- the state apparatus was weakened and the principle of division of powers was violated.

The so-called adaptation of national legislation to the requirements of international law, in particular, to the Aarhus Convention, did not help and even impeded the development of effective legal mechanisms for the protection of nature and the human rights to a favorable environment.

### **The Constitution**

#### **1993**

The Constitution of the Republic of Kazakhstan (further RK), January 28, 1993.

The original Constitution went out of force when a new Constitution was adopted on August 30, 1995.

#### **1995**

The Constitution of the Republic of Kazakhstan. Adopted by a republic referendum on August 30, 1995.

Changes incorporated:

Law of the RK, October 7, 1998, No.284-I;

Law of the RK, May 21, 2007, No.254-III;

Law of the RK, February 2, 2011, No.403-IV.

## **Environmental Protection**

### **2007**

Environmental Code of the Republic of Kazakhstan,  
January 9, 2007, No.212-III.

Changes incorporated:

Law of the RK, July 27, 2007, No.320-III;  
Law of the RK, December 4, 2008, No.97-IV;  
Law of the RK, December 10, 2008, No.101-IV;  
Law of the RK, June 23, 2009, No.164-IV;  
Law of the RK, July 17, 2009, No.188-IV;  
Law of the RK, November 16, 2009, No.200-IV;  
Law of the RK, January 21, 2010, No.242-IV;  
Law of the RK, March 19, 2010, No.258-IV;  
Law of the RK, December 28, 2010, No.369-IV;  
Law of the RK, January 6, 2011, No.378-IV;  
Law of the RK, January 6, 2011, No.379-IV;  
Law of the RK, January 10, 2011, No.383-IV;  
Law of the RK, March 1, 2011, No.414-IV;  
Law of the RK, July 5, 2011, No. 452-IV;  
Law of the RK, July 15, 2011, No. 461-IV;  
Law of the RK, July 22, 2011, No. 479-IV;  
Law of the RK, December 3, 2011, No. 505-IV;  
Law of the RK, January 25, 2012, No. 548-IV;  
Law of the RK, April 27, 2012, No. 15-V;  
Law of the RK, July 10, 2012, No. 31-V;  
Law of the RK, July 10, 2012, No. 34-V;  
Law of the RK, July 10, 2012, No. 36-V;  
Law of the RK, December 24, 2012, No. 60-V;  
Law of the RK, June 13, 2013, No. 102-V;  
Law of the RK, June 21, 2013, No. 107-V;  
Law of the RK, July 3, 2013, No. 121-V;  
Law of the RK, July 3, 2013, No. 124-V;  
Law of the RK, January 13, 2014, No. 159-V;  
Law of the RK, January 17, 2014, No. 165-V.

## **Land Protection and Use**

### **2003**

Land Code of the Republic of Kazakhstan, June 20, 2003, No.442-II.

Changes incorporated:

Law of the RK, May 4, 2005, No.48-III;

Law of the RK, January 10, 2006, No.116-III;  
Law of the RK, January 31, 2006, No.125-III;  
Law of the RK, June 22, 2006, No.147-III;  
Law of the RK, July 5, 2006, No.158-III;  
Law of the RK, July 5, 2006, No.162-III;  
Law of the RK, July 7, 2006, No.176-III;  
Law of the RK, January 9, 2007, No.213-III;  
Law of the RK, January 12, 2007, No.222-III;  
Law of the RK, July 6, 2007, No.275-III;  
Law of the RK, July 6, 2007, No.276-III;  
Law of the RK, July 6, 2007, No.279-III;  
Law of the RK, July 21, 2007, No.297-III;  
Law of the RK, July 21, 2007, No.307-III;  
Law of the RK, July 26, 2007, No.311-III;  
Law of the RK, July 27, 2007, No.320-III;  
Law of the RK, December 19, 2007, No.11-IV;  
Law of the RK, May 26, 2008, No.34-IV;  
Law of the RK, July 5, 2008, No.66-IV;  
Law of the RK, December 1, 2008, No.94-IV;  
Law of the RK, December 10, 2008, No.101-IV;  
Law of the RK, February 13, 2009, No.135-IV;  
Law of the RK, July 4, 2009, No.166-IV;  
Law of the RK, July 10, 2009, No.180-IV;  
Law of the RK, July 11, 2009, No.183-IV;  
Law of the RK, July 17, 2009, No.188-IV;  
Law of the RK, July 24, 2009, No.190-IV;  
Law of the RK, March 19, 2010, No.258-IV;  
Law of the RK, December 28, 2010, No.369-IV;  
Law of the RK, January 6, 2011, No.378-IV;  
Law of the RK, March 1, 2011, No.414-IV;  
Law of the RK, March 24, 2011, No.420-IV;  
Law of the RK, March 25, 2011, No.421-IV;  
Law of the RK, July 5, 2011, No. 452-IV;  
Law of the RK, July 15, 2011, No. 461-IV;  
Law of the RK, July 20, 2011, No. 464-IV;  
Law of the RK, July 21, 2011, No. 470-IV;  
Law of the RK, January 6, 2012, No. 529-IV;  
Law of the RK, January 9, 2012, No. 533-IV;  
Law of the RK, January 9, 2012, No. 535-IV;  
Law of the RK, January 25, 2012, No. 548-IV;  
Law of the RK, February 13, 2012, No. 553-IV;  
Law of the RK, February 15, 2012, No. 556-IV;

Law of the RK, April 27, 2012, No. 15-V;  
 Law of the RK, June 22, 2012, No. 21-V;  
 Law of the RK, July 10, 2012, No. 34-V;  
 Law of the RK, July 10, 2012, No. 36-V;  
 Law of the RK, December 24, 2012, No. 60-V;  
 Law of the RK, January 8, 2013, No. 64-V;  
 Law of the RK, June 13, 2013, No. 102-V;  
 Law of the RK, July 3, 2013, No. 121-V;  
 Law of the RK, July 3, 2013, No. 124-V;  
 Law of the RK, July 4, 2013, No. 126-V;  
 Law of the RK, July 4, 2013, No. 128-V;  
 Law of the RK, July 4, 2013, No. 130-V;  
 Law of the RK, January 17, 2014, No. 165-V.

## **Forest Preservation and Use**

### **2003**

Forestry Code of the Republic of Kazakhstan from July 8, 2003, No.477-II.

Changes incorporated:

Law of the RK, December 20, 2004, No.13-III;  
 Law of the RK, January 31, 2006, No.125-III;  
 Law of the RK, July 7, 2006, No.176-III;  
 Law of the RK, January 9, 2007, No.213-III;  
 Law of the RK, January 12, 2007, No.222-III;  
 Law of the RK, December 10, 2008, No.101-IV;  
 Law of the RK, July 17, 2009, No.188-IV;  
 Law of the RK, March 19, 2010, No.258-IV;  
 Law of the RK, January 6, 2011, No.378-IV;  
 Law of the RK, January 6, 2011, No.379-IV;  
 Law of the RK, July 5, 2011, No. 452-IV;  
 Law of the RK, January 12, 2007, No.224-III;  
 Law of the RK, January 12, 2012, No. 538-IV;  
 Law of the RK, January 25, 2012, No. 548-IV;  
 Law of the RK, July 10, 2012, No. 31-V;  
 Law of the RK, July 10, 2012, No. 34-V;  
 Law of the RK, July 10, 2012, No. 36-V;  
 Law of the RK, June 13, 2013, No. 102-V;  
 Law of the RK, July 3, 2013, No. 124-V.

## **The Preservation and Use of Water Resources**

### **2003**

Water Code of the Republic of Kazakhstan from July 9, 2003, No.481-II.



**Changes incorporated:**

Law of the RK, December 20, 2004, No.13-III;  
 Law of the RK, January 10, 2006, No.116-III;  
 Law of the RK, January 31, 2006, No.125-III;  
 Law of the RK, July 7, 2006, No.174-III;  
 Law of the RK, January 9, 2007, No.213-III;  
 Law of the RK, January 12, 2007, No.222-III;  
 Law of the RK, July 27, 2007, No.315-III;  
 Law of the RK, December 19, 2007, No.11-IV;  
 Law of the RK, May 26, 2008, No.34-IV;  
 Law of the RK, December 10, 2008, No.101-IV;  
 Law of the RK, December 29, 2008, No.116-IV;  
 Law of the RK, February 12, 2009, No.132-IV;  
 Law of the RK, July 10, 2009, No.180-IV;  
 Law of the RK, July 17, 2009, No.188-IV;  
 Law of the RK, January 21, 2010, No.242-IV;  
 Law of the RK, March 19, 2010, No.258-IV;  
 Law of the RK, December 28, 2010, No.369-IV;  
 Law of the RK, January 6, 2011, No.378-IV;  
 Law of the RK, January 10, 2011, No.383-IV;  
 Law of the RK, March 1, 2011, No.414-IV;  
 Law of the RK, March 25, 2011, No.421-IV;  
 Law of the RK, July 5, 2011, No. 452-IV;  
 Law of the RK, July 22, 2011, No. 479-IV;  
 Law of the RK, January 25, 2012, No. 548-IV;  
 Law of the RK, July 10, 2012, No. 31-V;  
 Law of the RK, July 10, 2012, No. 36-V;  
 Law of the RK, December 24, 2012, No. 60-V;  
 Law of the RK, June 13, 2013, No. 102-V;  
 Law of the RK, July 3, 2013, No. 121-V;  
 Law of the RK, July 3, 2013, No. 124-V;  
 Law of the RK, July 4, 2013, No. 128-V;  
 Law of the RK, July 4, 2013, No. 131-V;  
 Law of the RK, July 4, 2013, No. 132-V;  
 Law of the RK, January 13, 2014, No. 159-V;  
 Law of the RK, January 17, 2014, No. 165-V.

**Protection of Natural Objects and Complexes****2006**

Law of the Republic of Kazakhstan from July 7, 2006, No.175-III “About Specially Protected Natural Territories.”

Changes incorporated:

Law of the RK, January 9, 2007, No.213-III;  
 Law of the RK, December 1, 2008, No.94-IV;  
 Law of the RK, December 10, 2008, No.101-IV;  
 Law of the RK, July 17, 2009, No.188-IV;  
 Law of the RK, January 21, 2010, No.242-IV;  
 Law of the RK, March 19, 2010, No.258-IV;  
 Law of the RK, January 6, 2011, No.378-IV;  
 Law of the RK, March 1, 2011, No.414-IV;  
 Law of the RK, July 5, 2011, No. 452-IV;  
 Law of the RK, July 20, 2011, No. 464-IV;  
 Law of the RK, January 25, 2012, No. 548-IV;  
 Law of the RK, July 10, 2012, No. 36-V;  
 Law of the RK, June 13, 2013, No. 102-V;  
 Law of the RK, July 3, 2013, No. 124-V.

## **Protection of the Animal World**

### **2004**

Law of the Republic of Kazakhstan from July 9, 2004, No.593-II “On the Protection, Reproduction and Use of the Animal World.”

Changes incorporated:

Law of the RK, January 31, 2006, No.125-III;  
 Law of the RK, January 9, 2007, No.213-III;  
 Law of the RK, December 10, 2008, No.101-IV;  
 Law of the RK, July 17, 2009, No.188-IV;  
 Law of the RK, January 21, 2010, No.242-IV;  
 Law of the RK, March 19, 2010, No.258-IV;  
 Law of the RK, January 6, 2011, No.378-IV;  
 Law of the RK, January 10, 2011, No.383-IV;  
 Law of the RK, July 5, 2011, No. 452-IV;  
 Law of the RK, July 15, No. 461-IV;  
 Law of the RK, December 3, 2011, No. 505-IV;  
 Law of the RK, January 25, 2012, No. 548-IV;  
 Law of the RK, July 10, 2012, No. 36-V;  
 Law of the RK, June 13, 2013, No. 102-V;  
 Law of the RK, June 21, 2013, No. 107-V;  
 Law of the RK, July 3, 2013, No. 124-V.

## **Reformation of the Ministry of the Environment**

### **1988**

Decision by the Council of Ministers of the Kazakh SSR from February 18, 1988, “On Realizing the Decision of the Central Committee of the

Communist Party of the Soviet Union and the Council of Ministers of the USSR” from January 7, 1988, “On Fundamentally Restructuring Nature Protection Matters in the Country.” Created by the State Committee of the Kazakh SSR for Nature Protection.

### **1990**

Decree from the President of the Kazakh SSR from December 20, 1990, “On Reorganizing the State Management Bodies in the Kazakh SSR.”

To form the State Committee of the Kazakh SSR on Ecology and Nature Use on the basis of the abolished State Committee of the Kazakh SSR on Nature Protection.

### **1991**

Decision by the Cabinet of Ministers of the Kazakh SSR from March 29, 1991, No.202 “On an Outline for Managing the State Committee of the Kazakh SSR on Ecology and Nature Use.”

“In connection with the creation of the State Committee of the Kazakh SSR on Ecology and Nature Use on the basis of the abolished State Committee of the Kazakh SSR on Nature Protection, and in accordance with the Decree from the President of the Kazakh SSR from December 20, 1990, ‘On Reorganizing the State Management Bodies in the Kazakh SSR’, the Cabinet of Ministers of the Kazakh SSR has decided:

“1. To establish that the State Committee of the Kazakh SSR on Ecology and Nature Use (GosKomEkologiya) is the central body of state management in the field of nature protection and the use of natural resources, on par with the Oblast Executive Committee, Alma-Ata and Leninsky City Executive Committees, and bears, in its entirety, responsibility for the state of the environment and the rational use of nature in the republic.”

### **1992**

Decision by the Cabinet of Ministers of the Republic of Kazakhstan from March 11, 1992, No.216 “Issues of the Ministry of Ecology and Bioresources of the Republic of Kazakhstan.”

“In implementing the Decree of the President of the Republic of Kazakhstan from February 7, 1992, ‘On Updating the Organization and Activities of the State Management Bodies of the Republic of Kazakhstan under Conditions of Economic Reform’, in particular the formation of the Ministry of Ecology and Bioresources of the Republic of Kazakhstan, the Cabinet of Ministers of the Republic of Kazakhstan has decided:

1. To establish that the Ministry of Ecology and Bioresources of the Republic of Kazakhstan, having legal successors in the State Committee of the

Republic of Kazakhstan on Ecology and Nature Use and the Forestry Ministry of the Republic of Kazakhstan, has the authority and exercises the function of an oversight management and control body in the sphere of protecting the natural environment on the territory of the Republic of Kazakhstan.

The decision of the Ministry of Ecology and Bioresources of the Republic of Kazakhstan and its local bodies, adopted under its competency, is required for implementation by all ministries, departments, institutions, enterprises and organizations, regardless of the form of ownership and departmental affiliation, and by citizens.”

### **1997**

Decree from the President of the Republic of Kazakhstan from October 10, 1997, No.3655 “On Measures to Further Increase the Effectiveness of State Management in the Republic of Kazakhstan.”

This decree mandated the formation of the Ministry of Environment and Natural Resources of the Republic of Kazakhstan, transferring to this Ministry the authority to manage the property and matters previously the responsibility of the abolished Ministry of Energy and Natural Resources of the Republic of Kazakhstan.

### **2002**

Decree from the President of the Republic of Kazakhstan from August 28, 2002, No.931 “On Measures to Further Improve the State Management System of the Republic of Kazakhstan.”

This decree mandated the reorganization of the “Ministry of Natural Resources and Environmental Protection of the Republic of Kazakhstan by way of transferring to the Ministry of Agriculture of the Republic of Kazakhstan its functions and authority in the field of managing water, forest, fishing and hunting resources.”

### **2007**

The Environmental Code is passed. As a result, some of the powers of the Ministry of Environmental Protection are redistributed to local authorities. In particular, the right to perform state environmental assessments for a variety of enterprises was redistributed to local authorities.

By the Decree of the Government of the Republic of Kazakhstan dated December 8, 2007, No.1201 “Questions of the Ministry of Environmental Protection of the Republic of Kazakhstan,” the territorial organs of the Ministry of Environmental Protection were reorganized. They were merged.

The Nature Protection Control Committee of the Ministry of Environmental Protection of the Republic of Kazakhstan was reorganized into the Committee of Environmental Regulation and Control.

The territorial bodies of the Ministry of Environmental Protection were reorganized into the territorial bodies of the Committee of Environmental Regulation and Control of the Ministry of Environmental Protection.

### **2013**

In accordance with the Decree of the President of the Republic of Kazakhstan No. 466 dated on January 16, 2013, “About further improvement of the system of the state regulation of the Republic of Kazakhstan,” the Ministry of Environmental Protection of the Republic of Kazakhstan receives functions and authorities on implementation and control over the state policy of “green economy” development with giving it functions and authorities in the area of:

- Protection and control over efficient utilization of natural resources, development of a state policy in water resources management, and also functions and authorities in water resources management and fisheries development, excluding the matters related to melioration;
- Questions of solid waste management;
- Development of a state policy in the sphere of development of renewable sources of energy.

Decree of the Government of the Republic of Kazakhstan No.172 dated on February 25, 2013, adopted a new provision about the ministry which gives it an authority over the Forestry and Game Committee, Fish Industry Committee, Water Resources Committee (all of which used to be under jurisdiction of the Ministry of Agriculture).

In accordance with the Decree of the President of the Republic of Kazakhstan No.677 dated on October 29, 2013, “About further improvement of the system of the state regulation of the Republic of Kazakhstan,” the Ministry of Environmental Protection of the Republic of Kazakhstan is re-organized into the Ministry of Environment and Water Resources of the Republic of Kazakhstan.

Decree of the Government of the Republic of Kazakhstan No.1413 dated on December 27, 2013, “About some questions of the Ministry of Environment and Water Resources of the Republic of Kazakhstan” renamed committees, departments, and organizations within the jurisdiction of the ministry.

**Translated by Sofya Tairova**

## Incompliance with the Aarhus Convention and Discrimination

This material is prepared by residents of one of the streets of the city of Almaty who fight for more than ten years already for their right to live in a favorable environment. During this time, they had to go through all levels of jurisdiction. In 2004, they submitted a statement to the Aarhus Convention Compliance Committee (ACCC/C/2004/06). The decision was made in their favor. But numerous obstacles for access to justice still exist. State officials and businessmen continue to “surprise” people with new tricks.

The described area represents a territory of 50 m wide and one kilometer long. There are several private houses on this territory which are located within nine (!) sanitary and protection zones of different industrial enterprises and other facilities. The problem can be solved very easily, if the law was strictly followed. The people, simply, need to be resettled away from the sanitary and protection zones!

This is what the residents of Bokeykhanov Street tell themselves about their problems and their struggle.

“Our houses are located in an ecologically unfavorable district of the city of Almaty, and we are constantly faced with numerous problems created by our “neighbors.”

For example:

1. Plant specializing in unloading, storage, and sale of cement in bags and in bulk (capacity – 18 silo towers) – functions without observation of a sanitary and protection zone (SPZ). At the present time, the plant operates on the basis of permits on natural resources utilization (Environmental Impact Assessment – EIA) issued to the previous owner. This is a violation of the law.
2. Construction of a plant on production of non-alcohol drinks is being conducted without project design estimates, permits, and observation of the SPZ.
3. Railway branch lines serving to more than 30 industrial enterprises are in a private property. They function without observation of the SPZ, without EIA, and without consideration of opinion of the local population.
4. Widening of the traffic area of Bokeykhanov Street conducted in 2011 significantly worsened the quality of life of the population and ecological conditions. The widening was performed without public participation in the decision-making process and without consideration of the public opinion. There is no sanitary buffer zone, technical characteristics of the traffic area and sidewalks do not meet the requirements of the Constructional Norms and Rules.
5. Asphalt plant (20 Serikova Street) functions without observation of the SPZ since 1967. As for the moment, the previous EIA expired, no new

EIA project was presented to the residents, no public hearings were conducted during the whole history of the plant operation.

6. Asphalt plant (55 Bokeykhanov Street) functions without observation of the SPZ. Sanitary and epidemiological services (SES) admitted that the plant operates with violation of sanitary norms and rules. But environmental services of the city think that the ecological norms are being met. But the enterprise does not have a project of EIA, and public opinion was not considered.

7. Municipal cemetery. Exists from the 1960s. No SPZ exists. At the present time, the cemetery is being added new graves, i.e. the cemetery is active.

8. Auto-service and oil change station (99 Bokeykhanov Street) are located at a minimal distance from residential houses and utility constructions. They do not meet fire safety norms and rules, function without EIA, without consideration of opinion of the local population.

9. Basalt plant. From the owners' words, it does not operate at the present time, but officially, sanitary services did not stop the activity. At any time, the plant can start industrial activity. It is located on a territory of an enterprise which unloads and packs cement, without observation of SPZ stipulated by the law, without EIA, without consideration of the public opinion of the local population.

In 2001, a group of Almaty residents after a long and unsuccessful correspondence with state officials addressed a court with a lawsuit against an industrial enterprise located in a direct vicinity of residential houses. The enterprise was operating with gross violations of the legislation. But no justice was achieved.

In 2004, a statement was filed to the Aarhus Convention Compliance Committee. The statement was considered and, in 2008, a decision of the Meeting of the Parties of the Convention was adopted in relation to violation by the Republic of Kazakhstan of a number of its provisions. Up until now, no significant changes in relation to compliance with international treaties took place.

Meanwhile, the struggle of the residents with the owners of the plant, which changed several times, continued. And, in fact, it is still continuing. By the current legislation, every five years industrial entities must conduct EIA, organize public hearings, receive conclusion of environmental assessment and sanitary and epidemiological conclusion, and only after that they can continue operation.

But for example, in 2007, public hearings on EIA were conducted without participation of the residents who live in 10-15 m from the enterprise border, and who suffer from its activity. The EIA was agreed and the enterprise continued its work, and... during 5 years, air around the houses was filled with cement dust.



Numerous times, there were instantaneous releases of contaminants into atmosphere. But the municipal environmental services were saying that they do not possess of high-speed vehicles to get on place within 30 minutes. There were other excuses as well: no time, necessity to agree their actions with the city Prosecutor's Office, etc. Photographs and video-taping made by the residents, by the ecologists opinion, cannot serve as a prove, and it is necessary to officially record an instantaneous release on-site right at the moment.

Therefore, the residents collected a whole archive of numerous responds from environmental and sanitary services that the facts stated in the claims were not confirmed.

Especially, we would like to point out the position of the sanitary inspectors whose direct responsibility is to protect the health of the people. They violated the method of air sampling all the time. Sanitary inspectors came during the time when no works were performed at the plants. In order to perform air sampling, it is necessary to notify the enterprise administration, tell the date and the time of the sampling. Of course, the enterprise administration took all possible measures not to conduct any works during this time. Even the workers were removed from the territory of the plant. As a result, the air samples turned out perfect.

By "Kazgidromet" data, our district is the most unfavorable in the city. Although, the part of the city located closer to the mountains cannot be considered environmentally clean now. But according to the SES of the city, our street and the territory where the houses are located are an island of well-being, "oasis".

In 2012, when the cement plant needed to conduct a new environmental impact assessment, other public hearings were organized by a demand of the residents. As stated by ecologists, sanitary inspectors, representatives of akimats (mayor's offices), these public hearings were conducted in a strict compliance with the legislation. At the public hearings there were invited: workers of the plant, their relatives, many of them, came to the city of Almaty just to visit the family. As a result, the residents concerned by the environmental situation and the living conditions appeared to be in a minority. Majority of those who were present at the hearings, including those whose permanent residencies are in other cities – Karaganda, Atyrau, Aktau, Kustanay, by a solid vote, stated that the enterprise does not harm the environment, provides work places, and must function in the same manner.

Speech of the head of the organization which developed the project of EIA was very "interesting". According to the project, the source of emissions of contaminants is located in the center of the enterprise. The sanitary and protection zone was counted and established based on this location. In fact, the source of emissions is located on the border of the enterprise, in closest

spot to the residential houses. A question of the residents – how it happened – a reply was received that the data was developed by a computer program, and all questions must be directed to the program developers. As a result, the project of the EIA was successfully agreed and the works continued.

But... something did not go smooth for the enterprise owners and in spring 2013, it was sold on non-judicial auction. A new owner, another juridical person, appeared. And our environmental services decided that the project of EIA in case does not need to be developed, and even sent the residents a copy of a reply from the Ministry of Environmental Protection which stated without a reference on a provision of the legislation that the EIA is not needed. New owner was issued a permit on emission in the environment. But the people did not agree with such position of the environmental services. And up until now, although yet unsuccessfully, they are trying to prove that the EIA is needed to be redone, based on references on the norms of the law.

By a request of the people, the Ecological Society Green Salvation addressed a court with lawsuit about cancellation of the Rules of conducting of public hearings, which do not comply with the Aarhus Convention. The case reached the Supreme Court, and there was a hope that it would solve the problem and make a lawful decision. But alas! The hope failed. The Supreme Court denied in satisfaction of the claimants' demand stating that no violations were found.

Numerous times, the people addressed sanitary services of the city of Almaty with a request to implement another requirement of the current legislation – to mark the sanitary and protection zones on the area by special signs. As a result, they had to file a lawsuit on failure to act by the director of the department of sanitary and epidemiological control of the city of Almaty. The legal proceedings took over a year, but the Supreme Court satisfied the lawsuit demands of the people in the full extent. By the court decision, the director of the department must require the industrial entities to mark the area with special signs of sanitary and protection zones and present the people with graphic materials showing such zones. At the present time, the court decision is filed to the department of court bailiffs, as it is not implemented voluntarily yet.

The deteriorating ecological situation made the people to think about existence of other industrial facilities. After studying current laws and regulations, we came to the conclusion that the three railway branch lines operate illegally, as they were construction without observation of sanitary gaps. Numerous replies from the state structures demonstrate that no documents exist to prove otherwise. The railway is used to transport different cargoes, including fuels and lubricants. The trains run 24 hours a day at a very high speed, which is associated with a loud noise and creates a threat to

people's lives. New high capacity locomotives create a strong vibration. As a result, walls in our houses got covered with cracks; it became impossible to have a full rest neither at night, nor during weekends. The owners strongly believe: "The railway was working and will be working!" The struggle has only begun.

There is one more serious problem. According to the General plan of development of the city of Almaty, widening of Bokeykhanov Street must be associated with demolition of all the residential houses. In this regard, we are not allowed to build any new houses on our own land plots, we can only repair the existing buildings within the existing limits. The street widening is already completed, but nobody knows when the demolition of the houses is going to take place. According to the replies of the akimat and the head architect, this will take place when they find an investor. This means – never, because nobody needs a strip of land of 50 to 15 m wide between a main road and a railway, nothing can be built on such piece of land.

Akimat of the city stated that widening of the street was conducted in the interests of residents of other districts of the city of Almaty. The main road with traffic intensity of approximately 56,000 cars per day is at the maximum close distance to the walls of our houses. Every day, heavy-load vehicles pass along the road which causes a strong vibration.

Active construction of a traffic ramp is conducted in the area of a flea market. After the ramp is open, the traffic along Bokeykhanov Street will significantly increase, the living conditions will become even worse. Again, the city officials act in the interests of other citizens, and ignore our interests.

Thus, the gross intentional incompliance with the laws by the authorities leads to violation of our rights on favorable for life and health environment, i.e. to discrimination by a place of residence and other circumstances.

By the fact of discrimination, we filed a lawsuit to a court. We passed all instances, but without any result. The main argument of the judges: it is necessary to appeal the General plan of the city development. We are still at a loss from such statement, as in the lawsuit, we asked to oblige the akimat to strictly follow the General plan of the city development in the part of our re-settlement from the industrial zone.

At the present time, the residents are planning to address international human rights organizations."

**Material is prepared by the residents of Bokeykhanov Street of the city  
of Almaty Aleksey Gatin, Lubov Gatina, Tatyana Fominyh,  
Vladimir Cherepov**

**Translated by Sofya Tairova**

## Public Campaign “Protect Kok-Jailau!”

### Background

Almaty is the largest city of the Republic of Kazakhstan. It is located at the footsteps of a mountain ridge Zailiisky Alatau which is one of the branches of the Northern Tien Shan. In 1996, in order to preserve and recover unique natural complexes of Zailiisky Alatau, the government of Kazakhstan issued a decree about creation of Ile-Alatau State National Natural Park (SNNP) near the city. Its area is about 200,000 hectares. This is a beloved place of recreation for Almaty residents and visitors of the south capital. Its main attraction is untouched nature. The national park is a “green heart” of a vast area which is a home for more than two million people. Zailiisky Alatau provides the south part of Almaty oblast with water resources, first of all – high quality drinking water. Overall, about 2,000 species of plants<sup>1</sup> are known to grow in the park. It is a habitat for more than 1,700 species of animals, with 13 species of birds and 8 species of mammals included in the Red Book.<sup>2</sup> Among them: snow leopard (or irbis), lynx, Tien Shan brown bear, stone marten, ibisbill, and others.

### Why the public is against the construction of a mountain ski resort “Kokzhailau”

In the early 2000s, Kazakhstan mass-media started to publish articles about plans of construction of a large mountain ski resort on the territory of Ile-Alatau National Park.<sup>3</sup> In 2006, there was adopted a new law “About Specially Protected Natural Territories,” which was subjected to numerous amendments right away. As a result, as for 2014, the law contains contradictions and ambiguities which allow manipulating and random interpreting of its provisions. Therefore, the law ceased to be a base for preservation of specially protected natural territories.

In 2011, the akim (mayor) of the city of Almaty informed about plans of construction of an international mountain ski resort in Kok-Zhailau hollow.<sup>4</sup> As a part of the project, it is planned to create ski tracks of the total length of more than 50 km (earlier, it was stated that the length would be 500 km), construction of passenger cable ways, hotels, restaurants, malls; creation

<sup>1</sup> Baitenov M.S. Flora of Kazakhstan. – Almaty, 2001, volume 1-2.

<sup>2</sup> Project of reconstruction of the resorts “Medeu” and “Chimbulak”. Environmental Impact Assessment. CaspiEcology Environmental Services Ltd. 2007.

<sup>3</sup> <http://news.gazeta.kz/art.asp?aid=157264>, <http://news.gazeta.kz/art.asp?aid=168772>.

<sup>4</sup> <http://www.almatytourism.kz/index.php/proekt-gorno-lyzhnogo-kurorta-kok-zhajlyau>.

of infrastructure sites – auto road, parking lots, electrical and water supply systems. All of this is planned to be built on the public expense, with an estimation that later on, private investors would build up the resort with real estate. The project is called “strategic” and claimed that “thanks to this project we will pull out tourism for the whole country.”<sup>5</sup>

Kok-Zhailau hollow, located 10 km from Almaty, is one of the most accessible and beloved places of recreation for Almaty residents who like hiking, biking, skiing, and horse-back riding tourism. The hollow can be accessed by trails from Bolshoi and Maly Almatinsky Canyons.

Any mountain ski resort brings a significant negative influence on ecosystems – fauna, soil and vegetation, relief, water resources, and atmosphere. And the new resort is not going to be an exception. As shown by the world experience, profiling of ski tracks and construction of roads, buildings, and facilities inevitably lead to wiping down of vegetation.

Construction of infrastructure of the mountain ski resort on Kok-Zhailau will highly negatively reflect on biodiversity of Ile-Alatau National Park. Construction development and increase of pressure caused by inflow of tourists will inevitably force out birds and animals from their habitats. Soil and vegetation will be damaged. More than 30 hectares of a relict fir tree forest<sup>6</sup> will have to be clear cut. Meanwhile, Kok-Zhailau hollow is one of the few places where one can still find the famous Sivers apple tree which is an ancestor of many modern species of cultivated apple trees, but it is under a threat of extinction.

A system of artificial snow-making is planned to be installed to provide stable snow cover on 75% of the slopes. This will require 326,000 cubic m of water and construction of 4 underground reservoirs.<sup>7</sup> If the reservoirs are damaged at any time, it can cause mud flows.

At the present time, there are several springs and small creeks in the hollow which are incapable to provide the resort with such volume of water. Withdraw of water for the resort will harm the natural water balance in the park.

In 2002, Ile-Alatau National Park was included into a tentative list of sites nominated by the Republic of Kazakhstan into the World Heritage List.<sup>8</sup> Construction of the mountain ski resort contradicts to the criteria of

<sup>5</sup> [http://tengrinews.kz/kazakhstan\\_news/kurort-kok-jaylyau-kazahstanskie-senatoryi-nazvali-strategicheskimi-obyektami-199097](http://tengrinews.kz/kazakhstan_news/kurort-kok-jaylyau-kazahstanskie-senatoryi-nazvali-strategicheskimi-obyektami-199097).

<sup>6</sup> “Kokzhailau” ski resort feasibility study. Pre-EIA. V. 1: <https://docs.google.com/open?id=0BzXhutyNABDrSWRsNUItcUx1bGM>.

<sup>7</sup> “Feasibility study of taking out lands of specially protected natural territories of Ile-Alatau State National Natural Park into lands of reserve for construction of mountain ski resort “Kokzhailau” (page 49): <http://www.gis-terra.kz/services/debate/kokjaylay>.

<sup>8</sup> <http://whc.unesco.org/en/tentativelists/1681>.

Convention about protection of the world cultural and natural heritage. This significantly lowers the chances of the natural site to be included into the prestigious List. Meanwhile, the status of a World Heritage site would attract not less of foreign tourists to the national park than a mountain ski resort.

Construction of a large mountain ski resort in the national park contradicts many norms of national legislation in the area of specially protected natural territories, protection of the environment, water, forest, and land resources. Besides, it contradicts to the requirements of the international conventions ratified by the Republic of Kazakhstan: Convention on Biological Diversity, Convention about Environmental Impact Assessment in a Transboundary Context, Convention on the Conservation of Migratory Species of Wild Animals, and others.

Basically, the planned construction is nothing but a redistribution of the state property.

### **Campaign in protection of the national park**

Of course, idea of construction of the mountain ski resort in the national park caused indignation of thousands of not indifferent people.

There was started a campaign “Protect Kok-Jailau!” which was supported by many experts, scientists, athletes, and public organizations.

Ecological Society Green Salvation and activists of the campaign prepared an open petition to the President, delegates of the Parliament, Ministry of Industry and New Technologies, Ministry of Agriculture, Ministry of Environmental Protection, Ministry of Finance, Mayor’s Office of Almaty, and political parties of Kazakhstan and started collection of signatures. By the end of May 2014, the petition against construction of the resort in the national park was signed by more than 10,000 people – residents of Almaty and other cities and towns of Kazakhstan and citizens of different countries of the world who know and love our country.

The petition was sent twice to the President and the above mentioned addressees on January 30, 2012, and April 2, 2013. Neither in the first time, nor in the second time did the administration of the President reply to the collective public petition. The rest addressees (ministries, parliament, akimat, administration of the park, and others) replied the petition, but the questions and comments of the public were ignored.<sup>9</sup>

A special page devoted to the campaign “Protect Kok-Jailau!”<sup>10</sup> was created on the website of the Ecological Society Green Salvation. Later, activists of

<sup>9</sup> <http://www.greensalvation.org/index.php?mact=News%2Ccntnt01%2Cdetail%2C0&cntnt01arti cleid=439&cntnt01detailtemplate=news01detail.tpl&cntnt01returnid=51>.

<sup>10</sup> [http://www.greensalvation.org/index.php?page=KokZhaylyau\\_campaign](http://www.greensalvation.org/index.php?page=KokZhaylyau_campaign).

the movement opened a separate internet-portal<sup>11</sup> and a video-channel on YouTube,<sup>12</sup> where they publish all news and video-recordings. In order to inform the public and openly discuss the project and its problems, special groups were created on the social networks Vkontakte<sup>13</sup> and Facebook,<sup>14</sup> and also a popular Kazakhstan internet-forum “Vse vmeste.”<sup>15</sup>

In March 2012, the first open public discussion of the project took place at the meeting of the Institute of Political Decisions club<sup>16</sup> with a participation of the akimat representatives. A little later, Kazakh athlete Yelena Khrustaleva, silver medalist in biathlon at the Olympic Games in Vancouver (2010) and champion of the Winter Asian Games (2011), spoke in defense of the national park.<sup>17</sup>

In April 2012, honorary president of the Nature and Biodiversity Conservation Union of Germany (NABU), laureate of the alternative Nobel Prize, professor, doctor Michael Succow and NABU vice president, chairman of the NABU International Fund, Thomas Tennhardt addressed the president of Kazakhstan with a request to reject construction of a mountain ski resort in Ile-Alatau National Park.<sup>18</sup> Copies of the petition were submitted to the Minister of the Environmental Protection, Minister of Agriculture, and Minister of Industry and New Technologies.<sup>19</sup> But neither the administration of the president, nor any of the ministries replied the petition.

During three years, several press-conferences were organized in defense of the national park. Activists of the campaign took part in different TV and radio talk-shows and programs. Reports were prepared and presented at the conferences TEDxAlmaty,<sup>20</sup> SocialCamp Astana-2013,<sup>21</sup> Zhascamp,<sup>22</sup> “World Forum on Preservation of Snow Leopard,” “Conservation of Biodiversity in Trans-boundary Region of the Northern Tien Shan,”<sup>23</sup> and others. In order to explain people significance of the national park in their lives and

<sup>11</sup> [www.k-zh.kz](http://www.k-zh.kz).

<sup>12</sup> <https://www.youtube.com/user/ProtectKokZhailau>.

<sup>13</sup> <http://vk.com/club33570886>.

<sup>14</sup> <https://www.facebook.com/KokJailau?ref=ts&fref=ts>.

<sup>15</sup> <http://vse.kz/topic/433921-v-zaschitu-kok-zhailau/>.

<sup>16</sup> <http://k-zh.kz/2012/08/%D1%8D%D0%BA%D0%BE%D0%BB%D0%BE%D0%B3%D0%B8%D1%8F-%D0%B8-%D1%8D%D0%BA%D0%BE%D0%BD%D0%BE%D0%BC%D0%B8%D1%87%D0%B5%D1%81%D0%BA%D0%BE%D0%B5-%D1%80%D0%B0%D0%B7%D0%B2%D0%B8%D1%82%D0%B8%D0%B5-%D0%BE%D0%B1/>.

<sup>17</sup> <http://www.greensalvation.org/index.php?page=kj-hrustalyova>.

<sup>18</sup> [http://www.greensalvation.org/index.php?page=NABU\\_KJ](http://www.greensalvation.org/index.php?page=NABU_KJ).

<sup>19</sup> [http://www.greensalvation.org/index.php?page=NABU\\_KJ](http://www.greensalvation.org/index.php?page=NABU_KJ).

<sup>20</sup> <http://tedxalmaty.com/speaker/dmitrij-zhukov/>.

<sup>21</sup> <http://www.socialcamp.kz/ru/raspisanie>.

<sup>22</sup> <http://zhascamp.kz/presentations.html>.

<sup>23</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=486&cntnt01detailtemplate=news01detail.tpl&cntnt01returnid=51>.



the importance of its preservation, there were organized alpinists climbing, photo-contests, photo exhibitions, drawing and composition contests, and also concerts devoted to the international holidays “Mountains Day,” “Earth Day,” “March of Parks,” and others.

In March 2013, the activists organized a flash-mob “Kok-Jailau SOS – save our mountains!” Dozens of Almaty residents laid down on snow to express their protest.<sup>24</sup>

Twice, the activists conducted civil hearings where independent experts – tourists, climatologists, biologists, ecologists, financiers, economists, market specialists, architects, lawyers, and others expressed their fears.<sup>25</sup>

On May 31, 2013, a group of Almaty residents whole believe that their removal from the decision making process on the project of construction of the mountain ski resort “Kokzhailau” is a violation of their rights, submitted a statement to the Aarhus Convention Compliance Committee.<sup>26</sup> The Committee accepted it for consideration and registered it under the number ACCC/C/2013/88.

In April 2014, the campaign was supported by the Ecoforum NPO of the Republic of Kazakhstan.<sup>27</sup>

Three times the activists of the campaign addressed the city authorities with a permission to conduct a mass-meeting, but they were denied.

Throughout the whole campaign, the activists sent dozens of letters into different state organs trying to establish a dialog and find a legal solution to protect the national park and develop tourism. As a part of the campaign, the Ecological Society Green Salvation alone sent 163 appeals to different state organs, including 16 letters to the Prosecutor’s Office.

It should be noted that the campaign attracted attention of mass-media who actively cover it for more than two years already.

### **International support of the campaign**

As mentioned above, in April 2012, the campaign was supported by the Nature and Biodiversity Conservation Union of Germany.

In February 2013, the campaign in defense of the national park was supported by the German Alpine Club (Deutscher Alpenverein e.V.).<sup>28</sup>

<sup>24</sup> <http://www.greensalvation.org/index.php?page=flash-mob-sos-kj>.

<sup>25</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=469&cntnt01detailtemplate=news01detail.tpl&cntnt01returnid=51>.

<sup>26</sup> Statement to the Aarhus Convention Compliance Committee No. ACCC/C/2013/88: <http://www.unece.org/env/pp/compliance/compliancecommittee/88tablekaz.html>.

<sup>27</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=523&cntnt01detailtemplate=news01detail.tpl&cntnt01returnid=51>.

<sup>28</sup> [http://www.alpenverein.de/natur-umwelt/online-petition-gegen-skierschliessungsplaene-in-kasachstan-kasachstan-skigebiet-im-nationalpark\\_aid\\_12332.html](http://www.alpenverein.de/natur-umwelt/online-petition-gegen-skierschliessungsplaene-in-kasachstan-kasachstan-skigebiet-im-nationalpark_aid_12332.html).

On September 26, 2013, director of the UNESCO Center of the World Heritage sent a letter to the UNESCO resident representative of the Republic of Kazakhstan Olzhas Suleimenov. The letter says that the Center received a letter from the public which expresses their concern regarding the plans of construction of a mountain ski resort on the territory of Ile-Alatau National Park. The Center asks to file this letter to the competent organs and expects to receive comments on it together with corresponding information about the project.<sup>29</sup>

In October 2013, the public of the city of Almaty addressed the Secretary of the Convention on Biological Diversity and expressed their concern regarding the plans of construction of the mountain ski resort on the territory of Ile-Alatau National Park.<sup>30</sup> On October 24, the Secretariat of the Convention informed that they addressed to the Ministry of Environmental Protection for consideration of the public appeal and undertaking corresponding measures. The Government of Kazakhstan is recommended to create a special organ which could implement programs of the Convention on specially protected natural territories.

At the same time, the World Commission on Protected Areas of the World Conservation Union expressed their concern regarding the plans of construction in the national park and asked the leadership of Kazakhstan at all levels to consider the opinion of this respected organization.<sup>31</sup>

In February 2014, Reinhold Messner, traveler, writer, one of the most famous alpinists of the world, first to conquer all 14 above eight-thousand-meter peaks of the world, supported the public petition against building up Ile-Alatau National Park by ski tracks and other infrastructure.<sup>32</sup>

On March 6, 2014, at the international tourism exhibition ITB 2014 in Berlin, the project Mountain ski resort “Kokzhailau” was awarded an anti-award “Rusty Nail” for its unsustainability in tourism. It was the first time, when this anti-award was received by a project which is not implemented yet.<sup>33</sup>

On April 30, 2014, in Brussels, representatives of the European Ecoforum made a statement in support of the public campaign in defense of the national park. 38 representatives from different countries, including Austria, Belgium,

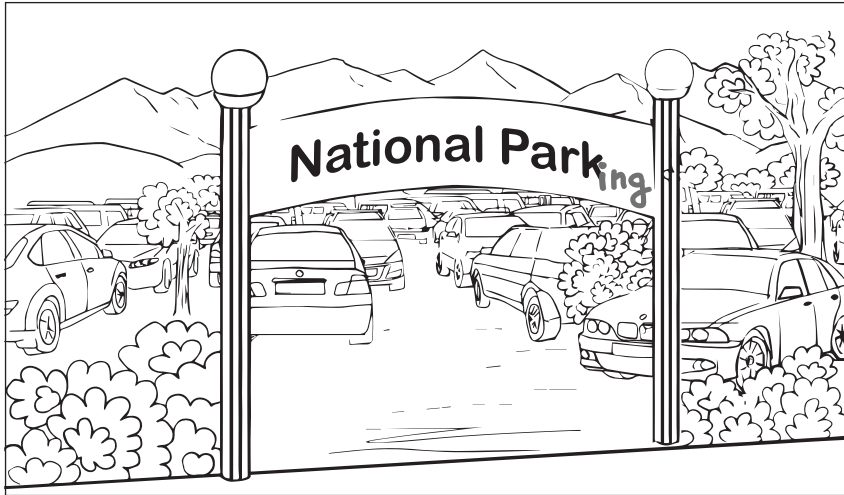
<sup>29</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=474&cntnt01returnid=51>.

<sup>30</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=480&cntnt01detailtemplate=news01detail.tpl&cntnt01returnid=51>.

<sup>31</sup> [http://media.wix.com/ugd/40939f\\_4ae578e88b1245b0bd64cfb626945c5b.pdf](http://media.wix.com/ugd/40939f_4ae578e88b1245b0bd64cfb626945c5b.pdf).

<sup>32</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=506&cntnt01detailtemplate=news01detail.tpl&cntnt01returnid=51>.

<sup>33</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=512&cntnt01returnid=67>.



Germany, Czech Republic, Great Britain, Russia, and others, appealed to the government of Kazakhstan to postpone the project-permission procedures until fully securing participation and accounting of the public opinion regarding this resonance project, in accordance with the requirements of the Aarhus Convention.<sup>34</sup>

### **State project-permission procedure**

In the end of 2011, the akimat of the city of Almaty created a Department of Tourism and adopted its Strategic Plan. Later, during implementation of the project “Kokzhailau,” there was created a company “Kokzhailau” Ltd. It was spent 375 million tenge (about \$2.5 million)<sup>35</sup> from the city budget to develop the resort feasibility study. The project feasibility study was started and a preliminary Environmental Impact Assessment (pre-EIA) was conducted. This is a violation of the Law “About Specially Protected Natural Territories,” because the local executive organ does not have a right to control lands of a national park, plan and conduct economic activity on its territory. National parks are a special protected territory of the state significance and are under jurisdiction of the Ministry of Environment and Water Resources.

On January 11, 2013, the first public hearings were organized to discuss the materials of the Preliminary Environmental Impact Assessment as a part

<sup>34</sup> <http://panoramakz.com/index.php/component/k2/item/35170-predstaviteli-obshchestvennosti-v-znak-protesta-pokinuli-slushaniya-po-proektu-gornolyzhnogo-kurorta>.

<sup>35</sup> Strategic plan of the Department of Tourism of the city of Almaty for 2011-2015: <http://www.almatytourism.kz/index.php/strategicheskij-plan>.

of the feasibility study of the project “Kokzhailau” mountain ski resort. The hearings were held with violations of the legislation – not everybody who wanted had a chance to enter the conference room where the hearings were held, not everybody was let an opportunity to express their comments on the project.<sup>36</sup> Public access to the documents of the pre-EIA was opened only a few days before the hearings. And it was only opened after the text of the documents was published on the website of the Ecological Society Green Salvation. All of this did not let the public concerned to study the documents closely and prepare detailed comments. Besides, there was no access to the full project documentation. After the hearings, activists of the campaign conducted a press-conference where they expressed their comments of the project.<sup>37</sup>

In spite of the protests of the public, the akimat of the city submitted the materials of the pre-EIA for a state environmental assessment to the Department of ecology of the city of Almaty which is a territorial sub-division of the Ministry of Environmental Protection (MEP). The Department did not accept the documentation for assessment because this was a competence of the Ministry. Department of Tourism of the city of Almaty submitted the materials to the MEP. A little earlier, a sub-division of the Ministry – the Forestry and Game Committee – pointed out to the developers the “incompliance of this project with the environmental legislation” and sent it for revision.<sup>38</sup> Having ignored the remarks of the committee, the developer submitted the project for assessment to the Ministry. The Ministry behaved very strangely. It redirected the project to the Department of Natural Resources and Regulation of Natural Resources Utilization of the city of Almaty, explaining that the “project is the 4<sup>th</sup> class of hazard and is subjected to consideration by the local executive authorities.”<sup>39</sup> The officials of the ministry and akimat did not feel embarrassed by the fact that the ministry changed the norms of the legislation on their own will.

On April 13, 2013, the Department of Natural Resources of the city of Almaty issued a positive conclusion of the environmental assessment. By this, it committed the following violations of the legislation.

The project is proposed to be implemented on a territory of the Republic’s state enterprise which is under control of the MEP. The city akimat does not have an authority to manage specially protected territories of the republic value, as was mentioned above. And the Department of Natural Resources does not have a right to conduct assessment of this level.

<sup>36</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=415&cntnt01detailtemplate=news01detail.tpl&cntnt01returnid=51>.

<sup>37</sup> <https://www.youtube.com/watch?v=gUea-rc435M&feature=youtu.be>.

<sup>38</sup> Letter of the Ministry of Environmental Protection No. 01-22/3T-JI-43-2 dated on 19.04.2013: <http://www.greensalvation.org/uploads/KokZhaylau/20130419letterFromMOOSTo021KJ.pdf>.

<sup>39</sup> Letter of the Ministry of Environmental Protection No. 01-22/3T-JI-43-1 dated on 16.04.2013: <http://www.greensalvation.org/uploads/KokZhaylau/201304LetterMOOS-OP2-KJ.jpg.jpg>.

The Department of Natural Resources and the Department of Tourism are both sub-divisions of the akimat of Almaty, i.e. the akimat became simultaneously developer and evaluator, which contradicts to the Environmental Code.

Creation of a large mountain ski resort contradicts to the goals and objectives of Ile-Alatau National Park and many norms of the national legislation.

The construction will lead to violation of many international obligations.

The project intends to clear cut relict forests (more than 30 hectares), even though according to the Forestry Code of the RK, any cuts are prohibited in national parks, except for sanitary and those necessary for forest protection measures (article 93, paragraph 3).

The project assumes destruction of rare and threatened species of plants,<sup>40</sup> which leads to a responsibility under the Criminal Code of Kazakhstan (article 290).

In the end of 2013, a process of transferring lands of Ile-Alatau National Park (area of 1002 hectares) into lands of reserve for construction of the mountain ski resort “Kokzhailau” was started.

On February 25, 2014, public hearings on the project “Feasibility study of transferring the lands of specially protected natural territories of Ile-Alatau State National Natural Park into lands of reserve for construction of a mountain ski resort “Kokzhailau” were conducted at the mountain ski resort “Shymbulak.”

These public hearings were also conducted with violations of the national legislation and the Aarhus Convention. Almaty residents who are not indifferent to the fate of the national park submitted several dozens letters to the Department of tourism with a request to postpone the hearings on a later date and to chose another location in downtown. This would allow every person concerned to take part in the discussion of the project. But the organizers ignored these requests! Despite of the fact that “public hearings assume equal rights for everybody to express their well-reasoned opinion,” not everybody was given a chance to speak out and ask questions.<sup>41</sup>

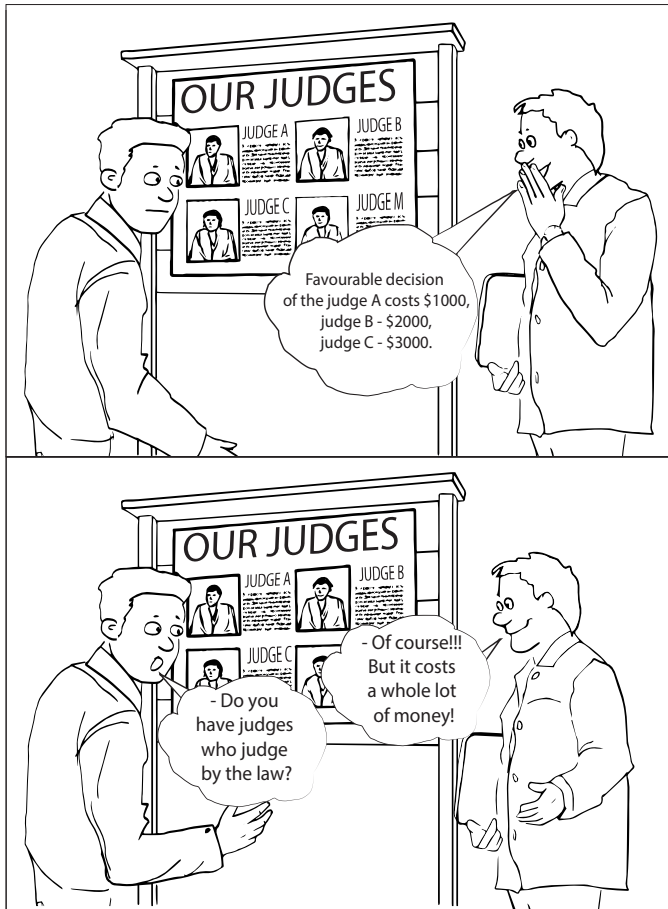
In parallel to that, preparation of detailed project documentation for the resort and a full environmental impact assessment was conducted.

On May 5, 2014, public hearings on the EIA of the project<sup>42</sup> took place again with violations of the Kazakhstan legislation and the Aarhus Convention.

<sup>40</sup> Pre-EIA – page137, chapter 10.1.4 Conclusion; Conclusion of the state assessment of the Department of Natural Resources and Natural Resources Management No. 07-08-133 dated on 13.04.2013, page 14: <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=441&cntnt01detailtemplate=news01detail.tpl&cntnt01returnid=51>.

<sup>41</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=507&cntnt01returnid=67>.

<sup>42</sup> <http://www.greensalvation.org/index.php?mact=News,cntnt01,detail,0&cntnt01articleid=527&cntnt01detailtemplate=news01detail.tpl&cntnt01returnid=51>.



### Legal proceedings

At this moment, 3 lawsuits were filed within the frames of the campaign.

On June 3, 2013, in the interests of an indefinite circle of people, a lawsuit about failure to act by the Ministry of Environment and Water Resources was filed to a court. The statement says about failure to perform their responsibilities on effective utilization of the state property for well-being of the society and on control of integrity of the property of the Republic's juridical person – Ile-Alatau National Park.

For a year, courts returned the statement to the claimants multiple times for different reasons. Sometimes, as if a lack of jurisdiction, other times, as if the

documents were made incorrectly, other times, as if no prove was presented. Their actions were appealed by a private complaint to the city court.

In October 2013, the Ecological Society Green Salvation addressed a court with a lawsuit about acknowledging the conclusion of the state environmental assessment of the pre-EIA project of the “Kokzhailau” mountain ski resort feasibility study to be invalid. The claimant believes that the conclusion is illegal both by the content and by the person who conducted the assessment. Court of the first instance declined to satisfy the lawsuit demands. The Ecological Society Green Salvation filed an appeal to the Almaty City Court. On March 18, the Appeal Board announced their decision. Once again, the court did not recognize the violations of the legislation and declined to satisfy the public demands. The case remains open.

In April 2014, a group of Almaty residents with a support of the Ecological Society Green Salvation filed a statement about acknowledging the public hearings on feasibility study of transferring lands of Ile-Alatau National Park into lands of reserve for construction of the “Kokzhailau” mountain ski resort and the hearings’ protocol to be invalid. On April 7, the court made a determination to decline accepting the statement. The judge pointed out “that it cannot be reviewed and solved... because the appealed by the claimants’ public hearings and protocol do not cause any juridical consequences.” On April 14, a private complaint was filed, and on May 27, the City Court cancelled the determination and filed the statement to the same court for consideration by the essence.

Thus, in spite of the protests of the public, in violation of the Kazakhstan legislation and international conventions, Almaty city officials continue lobbying the project of construction of the mountain ski resort on the territory of the national park and claim that they will start the construction already in summer 2014...<sup>43</sup> But the public intends to continue defending the national park.

**The material is prepared by Svetlana Spatar**  
**Translated by Sofya Tairova**

<sup>43</sup> <http://www.ktk.kz/ru/news/video/2014/05/05/27823> .



## Ecological Problems of Construction of a Mountain Ski Resort in Kok-Zhailau Hollow

*Natalya Frankovskaya,  
ecologist, candidate of geological  
and mineralogical science  
city of Almaty, Kazakhstan.*

The city of Almaty is the leader by the level of atmospheric pollution in Kazakhstan.

Auto-transport became the main source of pollution in the recent years (more than 90% of the total emissions volume).

The main stationary sources of pollution are heat and electricity power stations and burning stoves from private houses.

From three sides, the city is surrounded by mountains, and wind activity is weak, therefore, often, there is a lack of wind, fogs and surface inversions, which impede dispersion of particles in the air. This contributes to accumulation of pollutants in the surface layer of the air.

Oxygen content in the air decreases. For example, according to “Kazgidromet” data, in the 50s, oxygen content in the air was 21%, and now it is only 17%.

According to observation results, in September 2013, index of atmospheric pollution (IZA5) was 10.5 (which is a high level of pollution). Average concentration of formaldehyde was 3.3 times higher than the maximum permissible concentration (MPC), nitrogen dioxide – 2.9 times higher than the MPC. Maximum one-time concentration of nitrogen dioxide was 4.7 higher than the MPC, carbon monoxide – 1.6 higher than the MPC.<sup>1</sup>

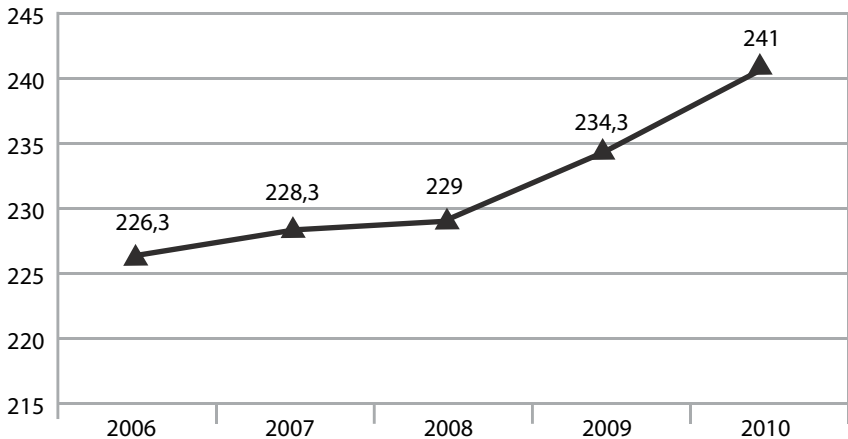
For the last 10 years, sickness rate in Almaty increased on 50%. For the number of cases of **respiratory, endocrine, and vascular system illnesses, malignant neoplasms, bronchial asthma among children, the city takes the first place in the republic**. The figure below illustrates dynamics of cancer cases in Almaty for the period from 2006 to 2010 (number of cases per 100,000 people).

The ecological situation in the city is mitigated by green vegetation and the mountain ridge located nearby.

Sanitary and hygienic functions of the green vegetation include:

<sup>1</sup> <http://www.eco.gov.kz/new2012/activity-of-state-authority/information-about-the-environmental-situation-in-the-regions-of-kazakhstan/ecobul/>.

### Dynamics of cancer cases in Almaty for the period from 2006 to 2010 (number of cases per 100,000 people)



maintaining oxygen balance in the air, decreasing dust particles and gasses pollution in the air, protection from wind, phytoncide action, decreasing noise level, improving radiation patterns. Besides, the vegetation influences heat patterns and air humidity, greenhouse gas emissions in the higher layers of atmosphere.

Some references indicate that an average tree produces oxygen enough for three people. Also according to some statistics, one hectare of deciduous trees absorbs up to 100 tons of dust per year.

The most active providers of oxygen are poplars. 1 hectare of poplar trees emits 40 times more oxygen into atmosphere than 1 hectare of fir trees. At the present time in Almaty, there is a trend of turning mature trees into bushes by cutting them down almost down to the roots. For example, a 45-year-old tree with a gigantic branch crown which offers shade, produces massive amounts of oxygen, provides a nesting place for birds would be turned into a two- or three-meter stump with one-meter-long branches trimmed in a shape of a sphere. Such method of “maintenance” brings to a minimum the benefits of the trees survived after massive tree cuts in the city.

According to Dialog.KZ web-portal, in 2010, more than 18 thousands of hundred-year poplars and elms were cut down. In return, the city authorities supposedly planted 24 thousand saplings. But the young trees will need dozens of years to reach the “projected capacity.”

As reported by the information agency Kazakhstan Today, ecologists suspect that the recent hurricanes in Almaty could be caused by the tree

cuts in the city and the suburban woodland belt. The trees played a role of a protection shield, which would dissipate gusts of wind. The ecologists also do not exclude the idea that decreasing number of trees in the city contributes to contrast temperatures in the air which cause vortex currents and strong winds. Thus, ecological situation in Almaty in the present time turns out to be quite depressing.

Research about influence of environmental pollution on sickness and death rate in Almaty conducted by the Kazakhstan Institute of Mineral Materials in the 90s, showed that life expectancy significantly depends on the level of pollution. And the zones with the highest life expectancy were noticed in the areas near large green zones or those laying closer to the mountains: Koktube, botanical garden, parks, Baum grove.

In a large extent, atmospheric air in the city becomes cleaner with the help of a mountain-valley circulating wind. At night, it blows from the mountains covered with glaciers, during the day – in the reverse direction. When flowing down from the glaciers, the air passes forest areas of the mountains and the foothills, where it gets enriched by oxygen and phytoncides, and its humidity increases. During the reverse movement, the polluted city air elevates up till the glaciers. Along its movement, most of the suspended polluting particles settle down in the green zone, its gasses pollution also decreases.

Factors which **decrease** effectiveness of purification of the air in the city are, first of all, building up the foothills and mountain zone, and also ill-conceived construction development within the city limits which blocks the natural air movement in horizontal direction.

In the soviet times, it was allowed to build summer houses (dachas) in the foothills. An obligatory condition for that was a limited height of the summer homes, and also planting the plot with fruit trees and plants. In these conditions, negative influence of the buildings was insignificant and was expressed in emissions from few vehicles and from burning stoves at some of the dachas in winter time.

In the post-soviet period, an intensive building up of the mountain and foothill zones began. Many-storied mansions were built in Chimbulak, Butakovskoe holloe, Kamenskoe Plateau, Kimasar hollow, Gorniy Gigant, Yubileyniy village, Bolshoi Almatinskiy canyon, and others. The construction development was conducted even in Ile-Alatau National Park.

The construction development required clear-cutting, elimination of vegetation, taking down of hills, construction of roads and infrastructure. And often, the construction waste was thrown away into hollows and river beds, littering and polluting water and soil. As a result, the green zone significantly decreased which affected the oxygen balance in the air, and the extent of purification of polluted air from dust and gasses reduced. Vast area



of construction developments and many-storey buildings affected the heat and wind patterns not only in the mountain and foothill zones, but also in the city. Besides, number of auto-vehicles in these zones boosted which in its turn increased the amount of emissions. Even visual observations show that the polluted air spreads higher and higher into the mountains, reaching Kok-Zhailau and Medeo. Thus, any construction development in the mountain areas adjacent to the city not only decreases favorable influence of the mountains, but becomes an additional source of air pollution in the city.

At the present time, a project of construction of a new international mountain ski resort “Kokzhailau” with a total length of ski tracks of more than 50 km is being developed. The resort is proposed to be built on the territory between Bolshaya and Malaya Almatinka Rivers. Projected area of the resort is 2,865 square hectares.<sup>2</sup> The project involves construction of passenger cable ways, hotels, restaurants, malls, and golf fields, and also building of infrastructure – auto road, parking lots, electrical and water supply systems. According to the Minister of Industry and New Technologies, Asset Issekeshiev, construction of the mountain ski resort on Kok-Zhailau will allow creation of up to 100 thousand workplaces.

<sup>2</sup> <https://docs.google.com/open?id=0BzXhutyNABDrSWRsNUIteUx1bGM>.

The press and Internet actively discuss this project. From the side of tourists, mountain lovers, and the city residents, the project found very negative responses. And only public officials insist on its implementation. And their arguments are often based on the following presuppositions:

“In Kok-Zhailau hollow, according to experts, - said the head of the tourism department, Bakhytzhon Zhulamanov, - average duration of skiing season is 7 months.” According to B.Zhulamanov, Kok-Zhailau is visited by a maximum of 100 people per day in winter, and 500 – in summer. Construction of the resort will allow increasing this number in several times.

“Thanks to this project, we will pull out tourism for the whole country, like Alps pulled out in Switzerland... This is, indeed, a strategic object, which has a state importance,” – said Akhan Bizhanov, chairman of the Committee of Social and Cultural Development. “Examples of Austria and Switzerland show that mountain tourism is capable to generate up to 10% of GDP of a country... We are talking about leaving the raw material dependency of the economy and diversification of the economy – from industrial enterprises to ecological services,” – he said.

These statements sound very doubtful.

First of all, total amount of precipitation at the altitude of 2,300-2,500 m is a little more than 800 mm (0.8 m) per year, and the depth of the snow cover on the plateau does not exceed 1.5 m. Stable snow cover is established not earlier than in mid November and continues only till March, and at the latitude of 2,500-3,000 – till April, i.e. average duration of skiing season does not exceed 4-5 months.

At the present time, Kok-Zhailau is visited by more than 500 people per day during weekends, and in winter the number of visitors is not less than in summer. During week-days, Kok-Zhailau is visited by up to one hundred people. During off-season, the number of tourists is a little smaller. But it should be noticed that we are talking about a territory of a national park, and allowed recreational pressure is limited.

Territory of Kazakhstan is 2 million 724.9 thousand square km, Zailiisky Alatau which lays almost perfectly along a latitude line, occupies 14 thousand square km (length – about 280 km and width is 40-60 km), or 0.5% of the territory of the republic. Ile-Alatau National Park, founded in 1996, has a territory of about 200 thousand hectares (2,000 square km) – 14% of the territory of Zailiisky Alatau. Forests in Kazakhstan occupy only 5.5%.

In Switzerland, mountains occupy almost two thirds of the territory of the country – 41,284 square km. About 25% of the territory of Switzerland is covered by forests. In Austria, which territory is 83,871 sq.km, 70% is occupied by mountains.

Territory of Zailiisky Alatau is almost 3 times less than the mountain

territory of Switzerland. Alps and Zailiisky Alatau differ by geo-morphological conditions.

Alps relief is characterized by long and wide intermountain valleys, plateaus, terraces, long and wide slopes. Basically, almost all mountain ski resorts are located in these valleys. They are located at the altitude of 1,400-1,800 m. Mountain ski tracks are laid at the altitudes from 1,400 to 3,600 m stretching from 100 to 350 km (at the most famous and fashionable mountain resort St.Moritz). By complexity of the tracks, the resorts are oriented on mountain skiers of all levels. Snow line is 2,700-3,000 m which provides year-round skiing. All resorts are equipped with flatland ski tracks, snowboards, and other winter sports. Main popularity of the resort comes from the surrounding nature, highest level of service, excellently prepared slopes and lift systems, absolutely pure and transparent air. Many resorts in Switzerland prohibit auto-traffic.

Not a single resort in Switzerland or in Austria is located near large cities, especially in their recreational zones. And this is explained not so much by an influence of the resorts on ecology of the cities, but by a negative influence of the cities on ecological conditions of the resorts. Essentially, the resorts are located in special resort villages with all necessary infrastructures.

In spite of the high ecological requirements to the mountain ski resorts in Alps, the ecosystem there is already damaged and there are any ecological problems. Those are forest cuts, destruction of natural landscapes, intensification of erosion processes, damage to animal habitats, excessive water and energy consumption, air and water body's pollution.

President of the Union for International Cancer Control (UICC), Franco Cavalli, in one of his interviews stated that auto-transport in mountain areas causes terrible ecological consequences not only for the environment, but also for humans, and leads to massive cancer incidences.

Talking about a direct relation of the level of cancer incidence from the environmental conditions, the expert indicated that relief features in combination with the level of pollution can create hotbeds of cancer morbidity. He drew an example of one of the regions of environmentally clean Switzerland, where the level of cancer incidence increased in consequence of increase of a number of auto-vehicles.

"In Switzerland, there is one region which used to have the lowest indicator of lung cancer incidence. 30 years ago, a highway was built there to connect the center of Switzerland with the peripheries. This is an enclosed area surrounded by mountains. Situation with air pollution because of the highway construction is much worse right now than 10 years ago. 30 years after the road was built, this region became a leader by the level of lung cancer incidence," – informed F.Cavalli.

Compare to Alps, orography and morphological features of Zailiisky Alatau mountains are less favorable for construction of mountain ski resorts. From the main mountain range, predominantly in meridian direction, ridges of a secondary degree are branching out and separate the main river basins. All river valleys in the upper parts are through valleys (троговые долины), in the lower parts, they turn into wide hollows and, in some places, gorges with kilometer-long cliffy walls. There are no wide intermountain, the Alps-like valleys in the vicinities of Almaty.

In no extent, Kok-Zhailau can claim to be compared to them, neither by the size, nor by the skiing conditions. Snow line of Zailiisky Alatau is located at 3,400-3,700 m which allows year-round skiing only on the glaciers

Thus, a comparison of natural conditions of Kazakhstan and Switzerland for development of mountain skiing is not in favor of Kazakhstan. Also, nature in our country is treated not at a high level. This is illustrated by the example of Chimbulak, where the mountain ski tracks are represented by eroded slopes which are lacking of soil and vegetation. Besides, in many spots, one can see random waste dump sites. During construction of mansions on Chimbulak, some of the construction waste was dumped from steep slopes directly into Malaya Almatinka River basin.

In many publications devoted to construction of a mountain ski resort on Kok-Zhailau, they consider different aspects: economy, ecology, society, sport. These aspects demonstrate groundlessness of this project.

Let us take a closer look at the ecological aspect of the project. Assurance of its supporters that the nature will not suffer during the construction does not stand up to any criticism. The ecological system has been forming for millions of years and any intrusion onto this system will disturb the established balance.

Impact on the environment during implementation of the project will take place during construction stage, as well as during operation of the site.

Construction stage foresees construction of roads, communications, buildings, platforms, lifts, mountain ski tracks, avalanche protection belts, and other facilities. During construction, road and building equipment will be used.

The main impact on atmospheric air will be made during ground works during construction of roads, ski tracks, and other facilities, and also during operation of auto-vehicles. Excavation works on the area of 100 square meters will produce dozens of tons of dust emissions per year, plus similar amount of dust being blew off from the surface of earth mounds. Operation of only one bulldozer produces more than 3 tons of carbon monoxide per year, nitrogen oxide – more than 300 kg per year, formaldehyde – up to 200 kg per year. A single vehicle working on diesel fuel emits more than a ton of polluting substances per year, including sulfur dioxide, nitrogen oxides, volatile organic



compounds, carbon monoxide, dust particles. Taking into account the scale of the construction, in actuality, many tons of contaminants can be expected to emit into atmosphere at this stage. Together with that, it can be expected that the dust and gas emissions will reach Maly Almatinsky and Bolshoi Almatinsky Canyons, spreading down to the city and up to the glaciers along the canyons.

Pollution of glaciers with dust emissions will increase their melting rate which will cause them to shrink down. This process is already taking place and not only because of climate change, but also because of atmospheric air pollution in the city, foothills, and mountains, which spreads up to the glaciers.

In the area of the projected construction, there are many springs, which give rise to creeks, which in their turn flow into Malaya and Bolshaya Almatinka Rivers. Obviously, they will suffer during the construction works. Construction of ski tracks requires flattening the slopes using heavy machinery, which can damage natural spring outlets and creek beds. Springs, creeks, and probably, ground water will be polluted not only with dirt particles and dust emissions, but also with oil product.

The construction will significantly impact the landscape and soil of the hollow. During construction of ski tracks, the primeval landscape will be destroyed. Soil layer is very thin in the mountains, especially on the slopes. It has been formed for thousands of years and can be easily destroyed by the construction. Even now, one can sometimes notice “bold” areas on the slopes which lack of any soil or vegetation. They could be caused by natural (mud slides) or anthropogenic (construction) factors. These areas are not overgrown for many years. A vivid example is Chimbulak. The slopes which used to be covered with deep vegetation, right now have “bold” spots without any soil and grass, in spite of some revegetation works (covering with turf). These spots are already subjected to erosion processes.

Flora of Maly Almatinsky Canyon consists of 811 species of plants, including 17 species listed in the Red Book of Kazakhstan, 11 endemic species. Abundance and diversity of flowers strike one’s imagination. Here, still remaining snowdrops (*Crocus alata*), several species of tulips, including tulip of Ostrovsky (*Ostrowskiana Tulip*), primrose, globe-flower, various medicinal herbs, which used to grow abundantly in the city vicinities, and now they can only be seen in the untouched mountain regions or far enough from the city. Numerous shrubs grow on Kok-Zhailau plateau. The fir trees growing on the slopes are more than 100 years already, and thousands of young trees planted back in soviet time grow in the valley itself.

The territory designated for construction of the resort is a home to numerous animals, birds, and insects. Here one can meet roedeers, wild boars, foxes, ermines, marmots, snowcocks, and others. It is a home for lynx and

snow leopard. Here various species of birds, including birds of prey, build their nests. Number and variety of insects cannot be simply described.

With the construction of the resort facilities, all this diversity will be under a threat of reduction and elimination. A direct influence will be caused by operation of road machinery, forest clear-cutting, removal of soil and vegetation layer, and other corresponding works, i.e. this will cause destruction of a habitat. Indirect influence will come from pollution of air, ground and surface water, noise.

Thus, after completion of the construction works, despite of all measures undertaken to reduce the negative influence on the environment, the ecological balance will be irreversibly damaged.

During exploitation of the resort, the main impact on the environment will come from significant increase of pressure of the ecosystem. Easy access to the mountainous areas will raise the number of visitors many times which will cause reduction of diversity of flora and fauna and increase in number of illegal dumpsters. Already now, this can be observed along the constructed auto- and cable-roads.

It is projected that the resort will be visited by up to 1 million people per year. This means that if every tourist stays at the resort for, at least, one day, there will be about 3,000 people on the resort each day, with the duration of stay of 7 days – about 20,000 people. These people will need to be provided comfortable conditions, food and water. All of this will require significant increase in consumption of electrical energy and water. At the same time, this will generate large amounts of waste – dozens of tons per day, not counting illegal dumpsters and littering. Supplying food and other materials and removing waste will require use of auto-transport which will contribute to atmospheric pollution by the exhausts.

Deterioration of the ecological conditions in the recreational zone will negatively influence the ecological situation of the city itself, and at the same time, polluted air from the city will reach the resort. What can appear before the resort visitors' eyes? From one side – magnificent view on the mountains, from the other side – grayish brown smog over the city, which rises towards the resort by the end of a day. Such view can only cause negative emotions and will hardly promote attraction of tourists.



[www.greensalvation.org](http://www.greensalvation.org)



## **The Ecological Society Green Salvation**



**050000, Republic of Kazakhstan, Almaty,  
Shagabutdinova Street 58, apt.28.  
Tel.:+7 (727) 253-62-56.  
E-mail: [grsalmati@gmail.com](mailto:grsalmati@gmail.com).  
Website: [www.greensalvation.org](http://www.greensalvation.org)**