

## **Suggestions and comments to the Draft Report on Compliance with the Aarhus Convention in the Republic of Kazakhstan**

### General comments.

1. The Report was presented by the Ministry of Environmental Protection for the public discussion with a big delay violating the time frames determined by the Secretariat of the Convention. This significantly limits opportunity for effective participation of the public in the discussion.

2. In our opinion, it is inappropriate to bring to a discussion a document with lacking or underwritten sections:

XII. Obstacles encountered during implementation of the article 5 (no answer).

XX. Existing opportunities for public participation in development of environmental policy provided in accordance with the article 7 (no answer).

XXIX. Obstacles encountered during implementation of the article 9 (underwritten).

3. Authors of the Report made unjustified emphasis on description of the legislation of the Republic of Kazakhstan. As a result, questions which needed to be answered, according to the initial structure of the Report, were left uncovered. For example, in the paragraph XVII “Additional information related to practical implementation of the article 6”, the authors needed to describe “additional information about practical implementation of the provisions in the article 6 related to public participation in decision-making process in specific types of activities”. Instead, they simply retell the articles of the Environmental Code of the RK. Many other sections of the Report have similar blunders.

4. The Report lacks of statistical data. Information about lawsuits filed to the courts of the Republic of Kazakhstan is given only for the years of 2007 and 2008 (see page 48)!

5. Nothing is mentioned about the obstacles which impede public access to justice. While the vice minister of the environmental protection M.Turmagambetov, when interviewed by the “Caravan” newspaper (November 5, 2010), had to admit that Kazakhstan “still did not implement one of the three main pillars” of the Aarhus Convention - access to justice in the aspects related to the environment (<http://www.caravan.kz/article/?pid=257&aid=15709>).

6. Nothing is mentioned about corruption which is one of the most serious factors confronting implementation of the Convention in the country.

7. In general, the Draft National Report on Compliance with the Aarhus Convention in the Republic of Kazakhstan in 2010 is prepared less thoroughly than the Draft National Report made in 2008.

### Comments by page.

On the page 4, it is said “Aarhus Convention is a part of the national legislation and, in case of any discrepancies with a national law, the Act of the international law comes into force. Thus, in accordance with the paragraph 3 of the article 4 of the Constitution of the Republic of Kazakhstan, the Aarhus Convention, as a ratified international treaty, has a priority over the laws of the Republic of Kazakhstan and its provisions and norms are applied directly”.

The Supreme Court does not think like that! See the decision of the Supreme Court № 3-36/2009 under the lawsuit about recognizing as invalid the Government’s Decree and “Rules of providing paid services by the governmental bodies in the area of forest industry and specially protected natural territories” (<http://www.greensalvation.org/uploads/Docs/20090715reshenieVS.pdf>).

On the page 5, it is said: “Financial issues shall not be an obstacle for implementation of the Aarhus Convention”.

High financial costs represent a significant obstacle to implementation of the Convention! In Kazakhstan, lawyer services are very expensive; it is very expensive to conduct experts’ assessments, as well. If a law case is to be heard in a different city, there are additional expenses, such as travel and accommodation. An average income person cannot really afford to file a claim to a court because of the financial reasons.

It should be noted that funding influences implementation of other elements of the Convention as well (access to information and decision making process), because postal, transportation, internet, and other services are very expensive.

On the page 10, it is said: “As for today, there is no a single recorded case of public persecution due to exercising of the rights in accordance with the Convention”.

This statement is not true. There are numerous examples (including the ones experienced by the Ecological Society Green Salvation) when direct and indirect pressure was put on people to make them refuse from protection of their rights.

On the page 18, it is said: “Also, there are legal reference systems on legislation of the RK: “Urist”, “Adilet” of the publishing house “AdiletPress” and company “UrInfo”, and Kazakhstan juridical internet portal: [www.zakon.kz](http://www.zakon.kz)”.

Services of some of the companies preparing these databases are very expensive, around 1000 dollars per year for an incomplete set of laws! This fact puts an obstacle on the access to the legal information.

Ecological Society Green Salvation  
November 19, 2010.