



"Жасыл сақтық" экологиялық қоғамы
Экологическое общество "Зеленое спасение"
Ecological Society "Green Salvation"

Республика Казахстан, 050000, г. Алматы, ул. Шагабутдинова 58, кв.28, тел./факс +7 (727) 253-62-56,
e-mail: grsalmati@gmail.com, www.greensalvation.org

The Question of Compliance with the Aarhus Convention in the Republic of Kazakhstan

Svetlana Katorcha, Sergey Kuratov, Nataliya Medvedeva, Svetlana Spatar

In summer 2011, the Fourth Meeting of the Parties to the Aarhus Convention will take place in Chisinau, Republic of Moldova. The Parties prepared reports about their compliance with the Convention to be presented during the Meeting. In our opinion, the document prepared by the Republic of Kazakhstan does not reflect some important aspects. Moreover, the document does not answer many questions that needed to be covered in accordance with the reporting requirements of the Convention's bodies.

How the National Report was Prepared

The report was prepared by the Ministry of Environmental Protection (MEP), which used its own data and materials from a number of governmental bodies and some non-governmental organizations. In accordance with the recommendations of the Aarhus Convention's Compliance Committee, the report preparation shall involve the public from the earliest stages, in order to establish effective participation in the process.

The Committee announced a schedule for the report preparation, according to which the consultations on the report's content should have been in July-August; preparation of the first draft in August-September; discussion of the draft for 30-60 days from September till the beginning of November; and preparation of the final version of the report from the beginning of November till the beginning of December 2010.¹ On December 8, 2010, the final version of the report had to be submitted to the Secretariat of the Convention and presented to the public.

But the Ministry violated the schedule. No consultations on the report's content were held. The draft report was published for an open public discussion on the websites of the Aarhus Center of the Republic of Kazakhstan and the Ministry of Environmental Protection² only on October 28 and November 3, 2010, respectively. The document was published in an unfinished version; some of the sections were missing or were incomplete.

All of this significantly decreased the opportunity for effective public participation; thus, a widespread discussion of the report did not take place. On November 5, 2010, in his interview to *Caravan*,³ Vice Minister of Environmental Protection M.Turmagambetov responded to the question of the national report's preparation: "Anyone willing to express their opinion regarding any arguable points related to environmental protection will be given such an opportunity during the consultations and "round tables" with the public and non-governmental organizations, which will be conducted for a month in Kazakhstan."

So, how was the draft report discussed? On November 4, 2010, in the office of the Aarhus Convention in the city of Atyrau, a discussion was held with the following representatives of non-governmental organizations in western Kazakhstan: G.Chernova, M.Khakimov, A.Shakhnazaryan and N.Ivaskevich. A resident of the city of Almaty, A.Tonkobayeva, also prepared personal remarks. The Ecological Society Green Salvation sent brief comments to the Ministry of Environmental Protection and to the Aarhus Center. In essence, this was the extent of the discussions, as the Ministry of Environmental Protection later confirmed.⁴

Since the report preparation schedule was violated, only one, final version of the document was presented, likely explaining the public's passivity on this issue. Any comments had to be submitted to the Ministry before November 19, leaving people only 22 days to become acquainted with the document—totaling over 50 pages—and to submit their comments. The passivity is also partially explained by the public's mistrust of governmental authorities who grossly violate the provisions of the Aarhus Convention, and the unclear position of the Convention's bodies towards Kazakhstan, which does not follow the requirements of the international agreement.

Official statements about the discussion of the draft report were not published. The report was submitted to the Secretariat, and it was unclear how public comments were considered, as the final version of the document was not published in either January or February 2011.

As such, Green Salvation submitted an inquiry to the MEP with a request to provide the final version of the report and information about the results of its discussion. No answer ensued; therefore, the Ecological Society had to address a court regarding the inquiry.

In the beginning of March 2011, the Ecological Society initiated a civil lawsuit. On March 28, we finally received the text of the report and an answer to our request from the MEP, signed by the Vice Minister of Environmental Protection M.Turmagambetov. He confirmed that widespread discussion of the document had not taken place.⁵

At approximately the same time, the report was published on the MEP website. In the final version of the report, despite the requirement to include a description of how the consultations with the public were held, such information is missing. According to the Aarhus Center, there are more than 200 environmental organizations in Kazakhstan. So, how do the Convention's bodies know which of those organizations participated in the report preparation, and how?

There is one more important aspect. Kazakhstan needs to prepare a special report for the Fourth Meeting of the Parties on the execution of decision III/6c of the Third Meeting of the Parties "Compliance by Kazakhstan with its Obligations under the Convention."⁶ However, the official bodies have not said anything about it, and it is unknown if this document has been prepared or not.

General Remarks

In the "Guidance on Reporting Requirements," prepared by the Compliance Committee in 2007, it is stipulated that the reports must contain more information about practical measures undertaken for compliance with the provisions of the Convention.⁷

Despite this fact, the Republic of Kazakhstan's report had the same shortcomings as the previous one. For example, the authors paid too much attention to analyzing the country's legislation, even in the sections (V, IX, and XVII) that should have described practical measures undertaken by state authorities. The description of the obstacles encountered during the realization of specific provisions of the Convention (sections IV, VIII, XII, XVI, XXV, and XXIX) had the same shortcomings. There were hardly any statistical data, specific facts, or answers to the given questions.

The deficiencies of current legislation are rightly pointed out by the authors as some of the main obstacles to complying with the Aarhus Convention. Based on many years of monitoring environmental legislation, the Ecological Society Green Salvation has repeatedly raised the issue of insufficiencies in the legislation.⁸

However, there are many other obstacles that were not mentioned in the report. The authors do not take into consideration cases of non-observance of the laws and the Convention, cases of inaction by public authorities, numerous violations of the law committed by bodies of justice, etc. The report fails to include numerous facts regarding gross violations of environmental norms by economic players of all levels, including transnational corporations.

The report also speaks to contradictions between different legal acts. However, it is not noted that, in a number of cases, these contradictions can be overcome by the **correct** application of the Law "About Normative Legal Acts" and the Aarhus Convention. The country not only lacks universal application of the Convention, but many public authorities and judges are still not familiar with this document, which the report authors do not mention.

Even the requirements of article 4, paragraph 3 of the Constitution, which states that international agreements supersede the laws of the Republic of Kazakhstan, and their provisions and norms shall be applied directly, are not always followed in real life. A vivid example is the Supreme Court's decision No. 3-36/2009 from July 15, 2009, on the Green Salvation lawsuit concerning acknowledgement of a government decree to be invalid. It says: "Analysis of the provisions of article 8 of the Aarhus Convention indicates that the Convention's provisions are characterized as **recommendations.**"⁹

Disuse and misuse of the Convention basically excludes it from legal practice. Therefore, the courts are still guided by the outdated legal norms, which lead to violations of the rights provided to citizens by this international agreement.

The Aarhus Convention stipulates "that **every person has the right to live** in an environment adequate for their health and well-being" and "that adequate protection of the environment is essential to human well-being and the enjoyment of **basic human rights, including the right to life itself.**" Article 26 of the expired Constitution of 1993 also stated that "every citizen of the Republic of Kazakhstan **has the right** to a natural environment that is favorable for life and health." However, this article was not included in the current Constitution of 1995. It is only stated that "the government has a **goal** of protecting an environment that is favorable for life and human health" (article 31). It does not guarantee, but sets it as a "goal," which is not an acknowledgement of the right to a favorable environment.

Despite this fact, the report authors try to present the situation regarding environmental rights in a more attractive way: "The main law of the Republic of Kazakhstan—the Constitution—prioritizes the safety of people, including environmental safety."¹⁰ With this casual interpretation of the Constitution, the authors do not provide any references to specific articles.

Having excluded from the Constitution the rights of citizens to a favorable environment, the lawmakers, nevertheless, oblige citizens to "protect nature and preserve the natural resources" (article 38).

The report authors point out a significant amount of mistakes, inaccuracies, and contradictions not only in the Environmental Code, but also in other normative legal acts. However, they do not specify what actions were undertaken by the public authorities to eliminate these faults. They do not explain why numerous amendments are introduced into the legislation every year. Instead of explanation, they simply state that "the flaws and contradictions revealed in the legislation of the Republic of Kazakhstan during the preparation of this National report can serve as a good basis for public participation in the lawmaking process, in accordance with the article 8 of the Aarhus Convention."

This statement contradicts what the authors write in section XXV: "The public's right to participation in the lawmaking process in the Republic of Kazakhstan is declaratively stated in legislation... Practice shows that today in Kazakhstan many aspects of public participation in the lawmaking process are not secured by legislation... As a result, the public often **does not have a real opportunity to participate in the lawmaking process**, except for in specific individual cases."¹¹ We fully agree with the authors' conclusion on this point.

In 2008, the Ecological Society Green Salvation organized a public campaign against the introduction of amendments to the Law "On Specially Protected Natural Territories." Under the pretext of tourism development, such amendments have created favorable conditions for further plundering and destruction of our country's most precious natural territories.

Exercising the rights stipulated by the Constitution and the Aarhus Convention, the Ecological Society Green Salvation prepared an open letter to the President, Senate, Security Council, General Public Prosecutor's Office, Ministry of Environmental Protection, Ministry of Agriculture, and the Ministry of Agriculture's Forestry and Game Committee. Our organization called on the public to support this campaign and 113 individuals and legal entities signed the open letter. But none of our proposals were considered, and we were not given any reasons why they were declined.

Numerous contradictions in the Environmental Code, pointed out by the report authors, prove the immaturity of this law and the fact that there was not any vital need for its adoption. Basically, the law was developed in order to weaken the current national environmental legislation, under the guise that the legislation needed to be brought in compliance with international norms. Thus, the Aarhus Convention was used as a cover for another manipulation of the law.

On the one hand, the authors do not deny that the recognition and securing of citizens' rights in legislation has not been followed by the creation of any legal implementation instruments. On the other hand, the authors do not explain why the government was inactive for so many years.

It should be noted that the report contains factual mistakes and inaccuracies, which also demonstrates how governmental authorities regard compliance with international obligations.¹²

Compliance with Article 4 of the Aarhus Convention

In section VII of the report, unreasonably close attention is paid to legal issues, but at the same time, important issues such as the realization of the right to access to information are missing. No analysis is made about the quality of the information, nothing is said about the lack of operational data or the fact that the public is often provided with invalid and incomplete data.

For example, an Informational Bulletin about environmental conditions in the Republic of Kazakhstan is published monthly on the websites of the Ministry of Environmental Protection and the Aarhus Center in the section on "The Environmental Situation." However, it only includes general information for the month. For example, none of the official websites have any **current** data by cities about atmospheric pollution. On the website of the Center of Hydro-Meteorological Monitoring of Almaty City, the data about atmospheric air conditions is published with a delay of several days.¹³

The report authors note that "some commercial, non-governmental, and governmental enterprises provide environmental information to a limited number of governmental organs and to the majority of other governmental and non-governmental customers at very high rates."¹⁴ But they do not indicate any specific organizations; therefore, we will give a few examples. The Republic-wide government enterprise "Kazgidromet" conducts monitoring of environmental conditions, but does not publish all of the information that is needed by the public. The rest of the information is provided for a fee. For example, information about atmospheric conditions in the city of Almaty costs approximately 80,000 tenge (about 530 U.S. dollars)! The general public and even small entrepreneurs are only able to afford these services in extremely urgent cases.

Independent assessment is very expensive as well, and citizens who need to protect their rights cannot afford to use these services. Information provided by the legal firms mentioned by the report authors—"Yurist," "Adilet," and "YurInfo" company¹⁵—is not cheap either. The cost for partial access to the legal library starts at 1,000 dollars per year.

In addition, the rates for mailing services, the Internet, telephone connections, etc. are continually rising. Thus, the high price of information "legally" limits access to it.

The report does not say anything about compliance with the time limits for providing information, and there are not any statistical data.

Analysis of the correspondence of the Ecological Society Green Salvation, which sends more than one hundred and fifty requests to governmental authorities per year, led to the following findings. In 2010, 173 letters were sent out. Replies were received for only 123 (71%). The other 50 requests (29%) were ignored. In two cases, due to this failure to provide information, the Ecological Society had to appeal to the court. But even the court does not guarantee that complete information will be provided.

The public funds "Medialife" (city of Karaganda) and "Decenta" (city of Pavlodar), with support from the Soros-Kazakhstan Fund, conducted research on access to information provided by governmental authorities. The collected statistical data is presented in the book "Realization of the Right to Access to Information in Kazakhstan." As part of the research, a number of requests were sent out to governmental authorities at the state level. "52 requests (62% of the total number of the requests) were replied... 20 requests (27%) received no answer. In other cases, the information was

incomplete.” Requests to the local authorities show even worse results. “...There were 1,038 requests made. Replies were received for 476 requests, which is 45.9% of the total number of requests... The remaining 562 requests (54.1%) received no answer.”¹⁶

The question of concealment of information deserves special attention. For example, on the MEP website, there is information about projects that were going through the state environmental assessment. But this information is not accessible to the public. The data is only available to the Ministry’s employees. This was confirmed by a representative of the MEP Committee of Environmental Regulation and Control in letter No. 10-02-22/1013, dated March 18, 2011.

The concealment of information takes place in many commercial enterprises, including those that are founded and operated with a support of international financial institutions, the World Trade Organization, and transnational corporations.

For example, in accordance with the Environmental Code, data on industrial environmental control is public information, and companies must provide public access to it.¹⁷ But some firms do not follow this requirement.

Green Salvation addressed requests to eight companies, and only three of them provided information promptly: “Ulba Metallurgical Plant” JSC, “Ust-Kamenogorsk Heating Network” JSC, and “AES Ust-Kamenogorsk Power Station” JSC.

It took several months to conduct negotiations with “Karachaganak Petroleum Operating B.V.” and “Tengizchevroil” LLP. And “AES Sogrinsk Power Plant” LLP, “Kazzinc” Ltd., and “Ust-Kamenogorsk Titanium Magnesium Plant” JSC completely ignored our appeals.¹⁸

Compliance with Article 6

In 2005, the Second Meeting of the Parties made decision II/5a “Compliance by Kazakhstan with its Obligations under the Aarhus Convention.” It was noted that there were no established mechanisms for public participation in the decision-making process in the country. Despite the opinion of the Meeting of the Parties and criticism from non-governmental organizations, specialists, and some citizens, governmental authorities did nothing in order to create necessary mechanisms for realization of the public right to participation in the decision-making process.

The report authors agree with the claims that public participation in the decision-making process is severely limited.¹⁹ Yet they do not explain why the authorities do not offer solutions to this problem or try to determine the reasons and prevent the possible negative consequences. And this should have been done because even the limited rights are very poorly observed.

Public hearings are organized with gross violations. Often, they are conducted by the project developers after a decision is made by the governmental authorities, without timely notification of the public, without prepared project documentation, and without consideration of public opinion. It should be noted that the report does not mention any cases in which public opinion was ignored, while in reality, this happens all the time.²⁰

The inadequate notification of interested persons about upcoming public hearings and falsification of the hearings are unabashed violations of the right to information. The authorities do not react adequately to these violations; they simply do nothing. For example, Kazakhstani newspapers publish messages such as these:

1. “‘KIEL-PLUS’ Ltd. finished developing the draft Environmental Impact Assessment (EIA) for an industrial site at 212-v Rayimbek Avenue. The project is submitted for consideration to the Department of Natural Resources and Regulation of Natural Resources Use” (*Kazakhstanskaya Pravda*, No. 351, dated December 25, 2010). This message does not clearly explain if public hearings are going to be held, when, or where.

2. “Notification. Draft EIA for ‘Aircraft repair factory No. 405’ JSC is submitted for environmental expertise in the city of Almaty. For any questions, call 257-23-43” (*Vecherniy Almaty*, No. 142, dated November 11, 2010). It is unclear what types of questions are being solicited, from whom, and whether or not public hearings are going to be held.

3. “‘Madi’ Firm Ltd. submits a draft EIA for a site located at 247 Seyfullin Avenue, Turksib district, city of Almaty, for a state environmental assessment. Telephone number for suggestions

and comments: 239-11-20” (*Vechernyi Almaty*, No. 20, dated February 10, 2011). This announcement does not make clear what is meant by “suggestions and comments,” and whether or not the public hearings are going to be held.

Unfortunately, hundreds of similar announcements are published in the final pages of newspapers in fine print. Can these notifications be considered an adequate, timely, and effective way of informing the public?! This only confirms that businessmen and authorities treat the public hearings as another formality.

Of course, this manner of informing the public about planned economic activity causes citizens to express their indignation. Nevertheless, even the courts consider such announcements to be written in accordance with all the requirements of national legislation and the Aarhus Convention.

At the same time, the developers of EIAs, who have licenses to conduct such activities,²¹ obediently execute the will of their customers. And the control organs compliantly follow instructions from the local authorities in power.

Thus, there are numerous ways to remove the public from the decision-making process.

The report authors do not speak to the serious obstacles that result from changes in legislation, the passing of subordinate legal acts, and the unjustified separation of functions between specialized nature protection agencies and executive organs.

This last issue has become such a serious problem that it was even mentioned in the report “Avenues for Improved Response to Environmental Offences in Kazakhstan,” published by the Organization for Economic Co-operation and Development in 2009: “The role of sub-national institutions is gradually changing from the limited involvement to date. The increasing involvement of such bodies in regulation and enforcement is very important as it presents an opportunity to closely engage with local communities. However, a poorly orchestrated decentralisation 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.**”²²

The “Rules for Conducting Public Hearings” which is a subordinate act, should be mentioned. The rules were adopted on May 7, 2007, by Decree No. 135-p made by the Minister of Environmental Protection. The terms used in the Rules either misrepresent or contradict the terms used in the Environmental Code, the Law “On Architectural, Urban Planning and Construction Activities in the Republic of Kazakhstan,” and the Aarhus Convention.

For example, according to the Rules, “the public concerned—is the public that is **influenced by the realization of decisions** related to the environment.” In other words, the decision is already supposed to have been made! And if, during the implementation of the decision, public interests are influenced, then the public can start defending their rights.

In accordance with article 2, paragraph 5 of the Aarhus Convention, “the public concerned” means the public **affected or likely to be affected by, or having an interest in, the environmental decision-making.**”

So, why were the Rules adopted? Most likely, to impede effective public participation in the decision-making process and not allow direct application of the provisions of the Aarhus Convention.

For the same reason, paragraph 7 of decision II/5a has still not been implemented. The paragraph contains the following recommendations to the Republic of Kazakhstan:

“(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.”

The report does not cover in any way the fact that decision II/5a has not been implemented.

The facts above demonstrate that governmental authorities, through manipulation of legislation, are trying to infringe upon the public rights provided by the Convention. The authorities and courts governed by the subordinate acts basically remove the public from the decision-making process.

Compliance with Article 9

As was admitted by the Vice Minister of Environmental Protection, M. Turmagambetov, in his interview to *Caravan* newspaper, the realization of the right to access to justice—one of the three main elements of the Aarhus Convention—has yet to be secured in Kazakhstan.²³ But in the section “Obstacles Encountered in the Implementation of Article 9,” the report authors do not mention the main points that impede the realization of rights, such as:

- addressing the court is significantly complicated by numerous manipulations of the norms of procedural law used by the judges;
- the principle of equity of the parties in court proceedings is violated;
- the principle of the independence of judges is violated—the courts are under pressure from the executive authorities in power;
- the execution of court decisions is not guaranteed and is often delayed or only partially executed.²⁴

Nothing is mentioned about corruption, which is one of the most serious factors counteracting compliance with the Convention in Kazakhstan. Meanwhile, prominent foreign sources indicate that corruption has penetrated the main governmental structures of Kazakhstan. According to the U.S. Department of State’s 2010 Human Rights Report for Kazakhstan, “The law provides criminal penalties for official corruption; however, the government did not implement the law effectively, and officials frequently engaged in corrupt practices with impunity. Corruption was widespread in the executive branch, various law enforcement agencies, local government administrations, the education system, and the judiciary. The Ministry of Internal Affairs, Financial Police, the KNB, and the Disciplinary State Service Commission are responsible for combating corruption. Opposition leaders and human rights NGOs accused the government of rampant corruption. According to the World Bank’s Worldwide Governance Indicators, corruption in the country was a problem.”²⁵

On April 14, 2011, events took place that confirmed the extreme corruption in the judicial system. As instructed by the President, a plenary session of the Senate of the Parliament of Kazakhstan considered the question of the dismissal of six Supreme Court judges. The General Public Prosecutor’s Office initiated criminal cases against them as suspects in corruption.²⁶ Because of this event, the chairman of the Supreme Court resigned from his position.

Another obstacle for access to justice is the fact that changes and amendments are continually introduced, which cause contradictions and reflect on the quality of the legislation. This was mentioned back in 2001 in the Message of the Constitutional Council of the Republic of Kazakhstan “About Conditions of the Constitutional Legality in the Republic”: “...Current legislation does not always develop systematically, the connection between its different areas is violated, and the stability of the laws is not secured. There are many problems related to the quality of the laws: contradiction between norms; the unjustly frequent introduction of changes; adoption of secondary, rather than primary laws; legislative procrastination; and imperfections of juridical techniques.”²⁷

Sometimes, the laws contain mutually exclusive norms. For example, article 21 of the active Law “On the Use of Atomic Energy” says that “the citizens of the Republic of Kazakhstan, public entities and organizations have a right:

- to receive information...about the safety of atomic energy sites **that are planned** for construction, under construction, operating, and under closure...;
- to conduct a public environmental assessment of the **planning documents** and control over the radiation indicators...”

Article 12 of another active law, the Law “On State Secrets” says “data regarding the **plans**,

construction, exploitation, or safety provisions of atomic energy sites” are governmental secrets.

Similar contradictions are seen in other normative legal acts as well. This proves that for many years there was no significant improvement in environmental legislation. Meanwhile, numerous corrections and additions were introduced into the laws during the period from 2008 to 2011.²⁸

Page five of the report states: “Financial questions are not an obstacle in the implementation of the Aarhus Convention.” But the facts demonstrate the opposite.

The high expenses of addressing a court are a significant obstacle for citizens and public organizations seeking to protect their rights. One has to pay a state duty and pay for lawyer services, which are prohibitively expensive in Kazakhstan. If a case is to be considered in another city, one has to cover travel and accommodation expenses, and so on. In addition, the legal costs are not always reimbursed even after a court decision is made. Therefore, a person with an average level of income typically cannot afford to submit an appeal to a court because of financial reasons.

Section XXIX of the report is one of the few containing statistical data. The data is likely taken from the website of the Supreme Court, but there are no references to the sources.²⁹ “...The statistical data does not contain indicators for the lawsuits initiated by the public before the current year. For 9 months of 2010, overall, there were 485 appeals from individuals and legal entities in matters related to environmental protection, including 13 appeals from individuals and 159—from public environmental organizations. In total, 159 lawsuits were satisfied by the courts, including 2 lawsuits from individuals and 53 lawsuits from environmental public organizations.”

It would be nice to see more specific statistical data though, for example, in relation to what kind of violations led to the lawsuits, by which organizations, and how the lawsuits were distributed by region. Specifically, statistical data reflecting execution of the court decisions should have been provided, because the poor execution of court decisions is one of the most acute problems.

In conclusion, we would like to draw attention to the report authors’ statement from page 9, which **is not true**: “To date, there are no documented cases of members of the public being persecuted because they sought to protect their rights in accordance with the Convention.”

There are many examples (including examples from the practice of the Ecological Society Green Salvation) when people have been subjected to direct and indirect pressure to force them to refuse protection of their rights.³⁰

Conclusions

After the Environmental Code was signed in the beginning of 2007, official bodies stated several times that the Code includes all the requirements of the Convention. The report mentions the measures undertaken in order to comply with decision II/5a prepared by MEP: “A political, legislative, and institutional basis has been created in the Republic of Kazakhstan for the active participation of all of society in the resolution of statewide issues, including environmental issues. Thus, **all conditions** for the proper provision of access to **all components** of the Aarhus Convention have been created in the Republic.”³¹ Such optimistic conclusions appeared in the report prepared for the Third Meeting of the Parties to the Aarhus Convention as well: “At the present time, in general, all conditions for the proper provision of access to **all components** of the Convention have been created on the legislative level in the Republic of Kazakhstan...”³²

The authors show less optimism in the report prepared to the Fourth Meeting of the Parties. As was mentioned above, they admit the imperfection of the Environmental Code and a number of other laws, contradictions between their provisions, and other serious faults in normative legal acts.

But despite the fact that the latest report is written in a more critical manner, in comparison to the last report, no real measures have been undertaken by the MEP, or by the government. The concealment of information and removal of citizens from participation in the decision-making process cause new and more acute conflict situations. As an ironic coincidence, a confrontation between developers and local residents of one of the micro-districts of the city of Pavlodar has been underway for several months already.³³ The conflict has been caused by the illegal construction of a 110kV high-voltage power line. Construction of a similar power line in the city of Almaty was one

of the factors leading to an appeal to the Aarhus Convention's Compliance Committee and to the adoption of the decision II/5a, which has still not been implemented.

The report authors do not even try to analyze what has occurred as a result of non-compliance with the Convention and what consequences can be expected in future.

In our opinion, the contents of the reports prepared for the Third and the Fourth Meetings of the Parties to the Aarhus Convention are proof of the failure and incapacity by the state to comply with the requirements of the international agreements over many years.

1. At the moment, it can be stated that the period of independence led to a very difficult environmental legacy. Thousands of people live in Sanitary Protection Zones and consume poor quality food. Fertile lands and populated areas are turning into dumpsters, forests are being destroyed, water reservoirs are continually being polluted, and the process of desertification is accelerating.

2. The public rights to access to information, access to the decision-making process in environmental issues, and access to justice are recognized in Kazakhstan. However, there are no mechanisms for their realization.

3. Realizing that compliance with the noted rights will require the development of democratic institutions in the country, the authorities in power do everything possible to impede these processes.

4. One more reason for non-compliance with the Convention is that the dominating political groups are intentionally weakening and destroying the state apparatus. This is confirmed by Kazakhstan's ranking in the Fund for Peace's Failed States Index.³⁴

We believe that the Convention bodies must make an unbiased evaluation of the implementation of the Convention's requirements by the parties. This is not a violation of their sovereign rights. Otherwise, silent support to authoritative and non-democratic regimes takes place. Measures must be developed to influence countries that fail to comply with the international obligations on a systematic basis, but not in the form of their exclusion as members of the Convention.

Translated by Sofya Tairova.

¹ 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/pp/Reports.htm>.

² <http://www.eco.gov.kz>; <http://www.aarhus.kz>.

³ A.Nurtazin. **There is no money for clean air.** *Caravan*, No. 45 dated on November 5, 2010, <http://www.caravan.kz/article/7369>.

⁴ Letter of the MEP dated March 18, 2011 No. 03-02-12/563-i.

⁵ Ibid.

⁶ Adopted at the Third Meeting of the Parties held in Riga, June 11-13, 2008,

<http://www.unece.org/env/pp/mop3/mop3.doc.htm>.

⁷ Guidance on Reporting Requirements, paragraphs 32-34:

http://www.unece.org/env/documents/2007/pp/ece_mp_pp_wg_1_2007_L_4_e.pdf.

⁸ For the Third Meeting of the Parties to the Aarhus Convention. Almaty, 2008;

<http://www.greensalvation.org/uploads/Publish/3thmeeting27052008.pdf>.

⁹ <http://www.greensalvation.org/uploads/Docs/20090715reshenieVS.pdf>.

¹⁰ Second National Report on Compliance with the Aarhus Convention, p.18;

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

¹¹ Ibid., p.40.

¹² For example, the authors refer to expired normative acts. The 2006 Law "About Protection of People's Health" (p.32) was cancelled by the 2009 Code "About People's Health and Healthcare System." The "Sanitary and Epidemiological Requirements for the Development of Industrial Sites" (p.42) were cancelled by order of the acting Minister of Public Health of Kazakhstan on October 6, 2010, No.795.

¹³ <http://www.almatymeteo.kz/?page=1797>.

¹⁴ Second National Report..., p.16.

¹⁵ Ibid., p.17.

¹⁶ Realization of the Right on Access to Information in Kazakhstan. Astana, 2008, p.56, p.64;
<http://www.medialife.kz/html/kniga>.

¹⁷ The Environmental Code, article 130.

¹⁸ <http://www.greensalvation.org/index.php?page=prokuratura-ecoinfo>.

¹⁹ Second National Report ..., pp.33-34.

²⁰ <http://www.greensalvation.org/en/index.php?page=human-rights>.

²¹ The Environmental Code, article 38.

²² Avenues for Improved Response to Environmental Offences in Kazakhstan. OECD, 2009, p.15,
<http://www.oecd.org/dataoecd/2/20/42072582.pdf>.

²³ A.Nurtazin. **There is no money for clean air.** *Caravan*, No. 45, November 5, 2010,
<http://www.caravan.kz/article/7369>.

²⁴ National Action Plan for human rights in the Republic of Kazakhstan for 2009-2012. – Astana, 2009, pp.126-127,
http://medialaw.asia/files/plan_ru.pdf.

²⁵ 2010 Human Rights Report: Kazakhstan, U.S. Department of State, April 8, 2011, p.25;
<http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154481.htm>.

²⁶ The Voice of Republic Newspaper, No. 14 (190), April 15, 2011;

<http://www.inform.kz/rus/article/2370743>; http://www.zakon.kz/top_news/209607-predsedatelju-verkhovnogosuda.html.

²⁷ The Message of the Constitutional Council of the Republic of Kazakhstan “About Conditions of the Constitutional Legality in the Republic”, March 24, 2001.

²⁸ See also: The Evolution of the Republic of Kazakhstan’s Environmental Protection Legislation. *Green Salvation Herald* 2011. – Almaty, 2011.

²⁹ http://www.supcourt.kz/system/inter.php?SECTION_ID=631&ELEMENT_ID=19273.

³⁰ Passengers in Forgotten Way Stations. *Green Salvation Herald* 2003-2004. – Almaty, 2004, p.62,
<http://www.greensalvation.org/uploads/Publish/Herald%202003-2004+.pdf>.

³¹ Compliance by Kazakhstan with its Obligations under the Convention and Its Implementation of Decision II/5a of the Meeting of the Parties, p.18, <http://www.eco.gov.kz/docs/orhus2.pdf>;

<http://www.greensalvation.org/en/index.php?page=Arhus-en>.

³² First National Report on Compliance with the Aarhus Convention, p.26,
<http://www.eco.gov.kz/sotrudnichestvo/index.php>.

³³ <http://www.gorodpavlodar.kz/News.html&file=article&sid=17246>.

³⁴ http://www.fundforpeace.org/web/index.php?option=com_content&task=view&id=99&Itemid=140.